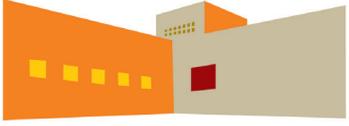


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New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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New Mexico Register

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October 30, 2018

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Notices of Rulemaking and Proposed Rules

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

NOTICE OF PUBLIC RULE HEARING

The Children, Youth and Families Department, Juvenile Justice Services (“CYFD”), will hold a public hearing on Wednesday, December 12 from 9:00 a.m. to 12:00 p.m. in room 502 on the fifth floor of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico, to receive public comments regarding repeal and replacement to make proposed updates to 8.14.14 NMAC, New Mexico Juvenile Detention Standards.

This regulation/rule applies to all New Mexico juvenile detention centers operating under the certification of CYFD and managed by county and local jurisdictions. This regulation/rule applies to all NM juvenile detention centers operating under the certification of CYFD and managed by county and local jurisdictions. The updates to this proposed rule affect site, design, construction, equipment, care, program, personnel, and clinical services; remove short-term holding facilities; and include robust requirements to improve communication between centers and CYFD.

The Delinquent Act, Chapter 32A Article 2 NMSA 1978, charges CYFD with the responsibility to promulgate updated Detention Standards.

The draft of the Juvenile Detention Standards may be accessed at <https://cyfd.org/special-programs/juvenile-detention-centers> or by emailing jjs.policy@state.nm.us. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. Wednesday, December 12. Written comments will be given the same consideration as verbal comments given at the hearing. Written comments should be addressed to: Juvenile Justice Services

(Policy & Procedures), Children, Youth and Families Department, PO Drawer 5160, Santa Fe, NM 87502; Email jjs.policy@state.nm.us.

If you require this information in an alternative format or require special accommodations to participate in the public hearing, please email Juvenile Justice Services at jjs.policy@state.nm.us. CYFD requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

CULTURAL AFFAIRS DEPARTMENT CULTURAL PROPERTIES REVIEW COMMITTEE

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

NOTICE IS HEREBY GIVEN that the Cultural Properties Review Committee (CPRC) will convene a public hearing on Friday, December 7, 2018 at 1:00 pm in the Old Senate Chambers, Room 238 in the Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501. Following the hearing, the CPRC will convene a board meeting to adopt the rules and take care of regular board business.

The purpose of the hearing is to consider repealing and replacing rules 4.10.8 NMAC, Permits to Conduct Archaeological Investigations on State Land and rule 4.10.14 NMAC, Cultural Properties on Private Land and Mechanical Excavation Permits. The CPRC proposes to repeal and replace both rules in order to clarify, supplement, and update both rules in order to facilitate the effective administration of permits for archaeological investigations on state and private land.

The statutory authority for the proposed changes to 4.10.8 NMAC is found in Section 18-6-5(O) NMSA 1978 of the Cultural Properties

Act. The statutory authority for the proposed changes to 4.10.14 NMAC is found in Sections 18-6-10 and 18-6-11 NMSA 1978 of the Cultural Properties Act. The CPRC is considering the adoption of a new rule 4.10.8 NMAC in order to change the term of the General Archaeological Investigation permit from one to three years, adopt the 1997 Secretary of the Interior’s historic preservation professional qualification standards, clarify the application process for listing on the SHPO Directory and the standards for continuing education credits, eliminate redundancies, and correct inconsistencies throughout the current rule. The CPRC is considering the adoption of a new rule 4.10.14 NMAC in order to clarify language, correct inconsistencies and update the standards for mechanical excavation.

The proposed rules are available at the Historic Preservation Division (HPD) website, www.nmhistoricpreservation.org, and at the HPD office located in the Bataan Memorial Building, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501. To request that a copy of the proposed rule be mailed to you, submit your request in writing to Historic Preservation Division, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501, by email to nm.shpo@state.nm.us, or via fax to (505) 827-6338.

The CPRC is currently accepting public comments on the proposed rules. Additionally, any person may appear at the hearing to submit their comments on the proposed rules. Written comments may be submitted by mail to: Historic Preservation Division, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501, by email to nm.shpo@state.nm.us, or via fax to (505) 827-6338. Written comments should be submitted for the CPRC’s consideration no later than 1:00 pm on December 7, 2018. Written comments will be posted on HPD’s website.

Individuals in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing should contact Annette Apodaca at 505-827-6314 or annette.apodaca2@state.nm.us at least five business days prior to the hearing.

**CULTURAL AFFAIRS
DEPARTMENT
NEW MEXICO ARTS DIVISION

PUBLIC RULE HEARING**

NOTICE IS HEREBY GIVEN that the New Mexico Arts Division (NMAD) of the Department of Cultural Affairs (DCA) will convene a public hearing on Thursday, December 6, 2018 at 1:00 pm in the New Mexico Arts Conference Room, Room 241 in the Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501.

The purpose of the hearing is to consider amending rule 4.12.11 NMAC, Art in Public Places Program. NMAD proposes to amend the rule in order to provide clarification and updating to facilitate the effective administration of the Art in Public Places Program.

The statutory authority for the proposed changes to 4.12.11 NMAC is found in Sections 9-4A-6, 13-4A-10, and 18-5-7 NMSA 1978 of the Art in Public Places Act. NMAD is proposing the following amendments to Sections 1, 7, 8, 9, 10, 12, and 15:

4.12.11.1 ISSUING AGENCY: Department of Cultural Affairs, New Mexico Arts (NMA) Division, Art in Public Places Program.

[4.12.11.1 NMAC - Rp, 4.12.11.1 NMAC, 9-30-2009; A, 01-01-2018]

4.12.11.7 DEFINITIONS: As used in this rule, in addition to those defined at 4.12.1.7 NMAC the following definitions apply.

A. "AIPP funds"

means the ~~[1% for art allocations]~~ funds allocated for the acquisition and installation of art from appropriations for new construction or renovations, as described in the arts in public places act, and is comprised of site-specific funds, see Section 13-4A-4(A) NMSA 1978, and auxiliary funds, see section 13-4A-4(B) NMSA 1978.

D. "Art selection committee" means the committee that selects the artwork and the artist for a commission or purchase project. See Subsections ~~[(L), (S), and (W)]~~ (M), (T), and (X) of 4.12.11.7 NMAC for the different types of art selection committees.

G. "Auxiliary Funds" means the AIPP funds allocated pursuant to Subsection B of Section 13-4A-4 NMSA 1978 for new construction or renovation of structures which are excluded from the provisions of the Art in Public Places Act under Subsection E of Section 13-4A-3 NMSA 1978. "Auxiliary Funds" may be expended on the acquisition and installation of art for existing public buildings as well as for administrative costs incurred by NMA for the implementation for the Art in Public Places Act.

[G:] H. "Building" means a relatively permanent structure or facility which includes fixtures and other built-ins and that is used for any of a wide variety of activities, including but not limited to plazas, parks and arenas.

[H:] I. "Commission" or "commission project" means the process of selecting a work of art to be designed and created for a specific building or site. ~~[Commission projects have budgets of forty thousand dollars (\$40,000) or greater.]~~

[H:] J. "Construct" means to make or form a building or make major renovations to a building and may include the cost of commissioning a building for energy efficient green building standards (i.e. LEED certification), as required by law; used interchangeably with "build".

[J:] K. "Deaccession" means the act of permanently removing an artwork from the state's public art collection.

[K:] L. "Finalist" means the individuals or artist teams selected from all artist submissions by the LSC to present maquettes, drawings, and other material for consideration as the selected artist for a commission project.

[L:] M. "Local selection committee or LSC" means the committee of five to eleven members excluding AIPP staff, that selects a site, develops a prospectus, and select an artist for the site.

[M:] N. "Maquette" means a finalist's scale model of the proposed artwork or other appropriate means of expressing the artist's idea.

[N:] O. "New Mexico artist" means an artist who resides in New Mexico. If an artist resides in New Mexico for only part of the year, to qualify as a New Mexican artist, the artist must reside in New Mexico for at least ninety days out of the year and have maintained this part-time residency for at least two years consecutively.

[O:] P. "Public art collection" means the collection of artwork which has been acquired by the NMA for display in public building throughout the state.

[P:] Q. "Project director" means the delegated individual who is responsible for working with the AIPP staff to oversee the art selection process for a commission project. The project director is usually a representative or designee of the owner or the group using the building under construction or renovation.

[Q:] R. "Prospectus" means the document issued by the arts division for the purpose of publicly stating the criteria for the specific project. The prospectus is made available to all artists who are interested in applying and are created for each commission project.

[R:] S. "Purchase project" or "purchase" means the process of acquiring an artwork that has previously been created by an artist and is selected by the RBC for

their site. ~~[Projects with budgets up to forty thousand dollars (\$40,000) are purchase projects.]~~ NMA shall determine the maximum number of artworks a site may purchase.

~~[S:]~~ **T. “Regional buying committee” or “RBC”** means the committee made up of two to three local representatives of a public building or site receiving AIPP funds for the purchase of artwork. The RBC is responsible for the selection of artwork for their site.

~~[F:]~~ **U. “Selection criteria”** means a varying list of qualifications included in the prospectus, which an artist’s submission must meet to be considered by an art selection committee for a public art project.

~~[H:]~~ **V. “Site”** means the place where the public artwork shall be located.

~~[V:]~~ **W. “Site specific”** means artwork that is created for, and tailored to a particular site and community. Pre-existing artwork does not qualify as site specific.

~~[W:]~~ **X. “Submission review panel” or “SRP”** means the committee comprised of a minimum of five members who are artists or arts professionals that review artist submissions for purchase projects and make recommendations to NMA, following a set of criteria, for the selection of a manageable number of artworks to be viewed by RBC and purchased by public agencies. [4.12.11.7 NMAC - Rp, 4.12.11.7 NMAC, 9-30-2009; A, 01-01-2018]

4.12.11.8 ADMINISTRATION OF AIPP PROGRAM AND FUNDS: The AIPP program shall administer and use funds derived from the Art in Public Places Act to acquire works of art, in ~~[eonsolation]~~ consultation with art selection committees through either the commission process~~[-]~~ or the purchase process, ~~[or]~~ for installation and display in ~~[public building]~~, upon, or around public buildings throughout New Mexico which reflect the cultural, ethnic and artistic diversity of New Mexico, the region, and the nation. Public artworks may be an integral part of

the building, attached to the building, detached within or outside the structures or placed on public lands, part of a temporary exhibit or loaned or exhibited by the agency in other public facilities.

A. The AIPP program may aggregate AIPP funds, when appropriate and with concurrence of the site owner, for a more significant public art project. There is no limit to the amount of funds that may be aggregated and allocated for a specific project.

B. The ~~[NMA]~~ AIPP Program shall determine how auxiliary funds will be utilized.
(1) Auxiliary funds may be used to acquire and install works of art for existing public buildings in accordance with the Art in Public Places Act, or works of art that are available for loan in, upon, or around public buildings.

(2) Auxiliary funds may also be used NMA for administrative costs incurred by NMA for the implementation of the Art in Public Places Act.

C. Applicability of Art in Public Places Act.

~~[E:]~~ **(1)** ~~[If an individual project that is part of]~~ A statewide repair appropriation is ~~[for an amount over one hundred thousand dollars (\$100,000), then that project’s funds are]~~ not subject to the one percent allocation.

~~[D:]~~ **(2)** Determination of whether the Art in Public Places Act applies to a project is made by the AIPP Program and is based on the original appropriation.

~~[E:]~~ **(3)** Reauthorized appropriations for which the original appropriation was subject to the Art in Public Places Act shall remain subject to the AIPP allocation. In these instances, the one percent allocation shall be placed in the auxiliary fund. If the original appropriation was ~~[not]~~ not subject to the Art in Public Places Act, then no funds will be allocated to the AIPP, regardless of the purpose of the reauthorized appropriation.

D. If after four (4) years and five (5) documented

attempts to contact the site owner to spend site-specific AIPP funds, the funds remain unspent, the AIPP funds may, at the discretion of the AIPP Program, be designated as auxiliary funds. Written notice of the auxiliary designation shall be sent to the site owner with a copy retained in the project file.

[4.12.11.8 NMAC - Rp, 4.12.11.8 NMAC, 9-30-2009; A, 01-01-2018]

4.12.11.9 GENERAL COMMISSION PROCEDURES: ***

D. Membership composition.
(1) The LSC is composed of five to ~~[eleven]~~ 11 members excluding the AIPP staff. ***

F. LSC responsibilities. ***
(6) A ~~[two-thirds (2/3)]~~ majority vote is required for an artist to be selected as the final artist and the selection shall be formally approved, duly moved and seconded.

[4.12.11.9 NMAC - Rp, 4.12.11.9 NMAC, 9-30-2009; A, 01-01-2018]

4.12.11.10 GENERAL PURCHASE PROCEDURES:

A. NMA shall develop and advertise a prospectus that invites artists meeting specific criteria outlined in the prospectus, to apply with previously created artwork for review to be selected by sites. ~~[having budgets up to forty thousand dollars (\$40,000)-]~~

[4.12.11.10 NMAC - N, 9-30-2009; A, 01-01-2018] ***

4.12.11.12 DEVELOPMENT OF THE PROSPECTUS:

A. There are two types of prospectuses.
(1) Purchase prospectus - created by AIPP staff for several sites. ~~[having budgets up to forty thousand dollars (\$40,000)-]~~ Each site’s RBC selects artwork for its facility.

(2)
Commission prospectus - created by AIPP staff in collaboration with the LSC. [~~for sites having budgets beyond forty thousand dollars (\$40,000).~~] These are site-specific works created exclusively for a certain location.

B. For a commission prospectus.

(1) The LSC shall consider various criteria in order to identify what type of art it is looking for. [~~€~~] The criteria must be written into a prospectus.

[~~Đ~~] (2) LSC members have a responsibility to determine as much about what they want as possible and to include that information in the prospectus, in order not to waste their own time reviewing needless submissions, or the time of artists in preparing inappropriate submissions.

[~~E~~] **C.** Factors to be considered for the prospectus include the following.

*** (4) Eligibility- all competitions are open to New Mexico artists, and, depending on the scope of a project, the competition may be open to larger regions.

*** [~~F~~] **D.** Distribution of the prospectus - the prospectus shall be advertised and distributed in such a way as to reach as many artists as possible and shall include one or more of the following methods:

(1) NMA email blast, newsletter, [~~artspeak~~, and] the NMA website [~~--the NMA staff shall publish the availability of prospectuses in its quarterly newsletter, which is mailed to artists and galleries throughout the United States. The current prospectuses are posted on the NMA website at www.nmarts.org.] --www.nmarts.org, and NMA social media outlets (e.g. Facebook, Instagram) or other comparable methods.~~

[4.12.11.12 NMAC - Rp, 4.12.11.12 NMAC, 9-30-2009; A, 01-01-2018]

4.12.11.15 VARIATIONS TO PROCEDURES:

C. Variations may be

incorporated into the art selection process with the approval of the AIPP program [~~manager~~] director.

[4.12.11.15 NMAC - Rp, 4.12.11.15 NMAC, 9-30-2009; A, 01-01-2018]

The proposed rules are available at the NMAD website, <http://www.nmarts.org/>, and at the NMAD office located in the Bataan Memorial Building, 407 Galisteo Street, Suite 270, Santa Fe, New Mexico 87501. To request a copy of the proposed rule be mailed to you, submit your request in writing to New Mexico Arts Division, 407 Galisteo Street, Suite 270, Santa Fe, New Mexico 87501, by email to nicholas.henderson@state.nm.us, or via fax to (505) 827-6043.

NMAD is currently accepting public comments on the proposed rules. Additionally, any person may appear at the hearing to submit their comments on the proposed rules. Written comments may be submitted by mail to: New Mexico Arts Division, 407 Galisteo Street, Suite 270, Santa Fe, New Mexico 87501, by email to nicholas.henderson@state.nm.us, or via fax to (505) 827-6043. Written comments should be submitted for NMAD's consideration no later than 1:00 pm on December 6, 2018. Written comments will be posted on NMAD's website.

Individuals in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing should contact Cindy Gonzales at 505-827-6490 or cynthiar.gonzales@state.nm.us at least five business days prior to the hearing.

**GAME AND FISH,
DEPARTMENT OF
STATE GAME COMMISSION
MEETING AND RULE MAKING
NOTICE**

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Friday, November 30, 2018, beginning at 8:00 a.m. at the Roswell Convention and Civic Center, 912 N. Main St, Roswell, NM 88201, to hear and consider action as appropriate on the following: Presentation of proposed changes to the Hunting and Fishing Licenses and Application rule.

Synopsis:

The proposal is to adopt a new Hunting and Fishing Licenses and Application rule, 19.31.3 NMAC, which will become effective April 1, 2019.

The proposed rule amends the Private Land Pronghorn Antelope and Elk Licenses section to accommodate current and previous changes to the Pronghorn, Elk and E-PLUS rules, adjusts the Validity of Licenses restriction to accommodate current unitization agreements, eliminates duplications with other rules in the restrictions section, and amends the game hunting license fee refund. A more detailed summary, and the full text of changes, is available on the Department's website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes to the Hunting and Fishing Licenses and Application rule at specialhunts@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on November 29, 2018. The final proposed rule will be voted on by the Commission during a public meeting on November 30, 2018. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on November 30, 2018.

Full copies of text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department's website at www.wildlife.state.nm.us.

state.nm.us/commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

GAME AND FISH, DEPARTMENT OF

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Friday, November 30, 2018, beginning at 8:00 a.m. at the Roswell Convention and Civic Center, 912 N. Main St, Roswell, NM 88201, to hear and consider action as appropriate on the following: Presentation of proposed changes to the Revocation rule.

Synopsis:

The proposal is to adopt a new Revocation rule, 19.31.2 NMAC, which will become effective April 1, 2019.

The proposed new rule changes the revocation point value for hunting, fishing or trapping on private land without written permission. The new rule adds and clarifies language to suspend individuals who fail to appear in court on wildlife violations. The rule adds penalties for individual who purchase licenses or stamps with insufficient funds or individuals who stop payment of their purchases as well as changing timelines throughout the rule for consistency throughout the rule. A more detailed summary, and the full text of changes, is available on the Department's website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes to the Revocation rule at DGF-FieldOpsComments@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on November 29, 2018. The final proposed rule will be voted on by the Commission during a public meeting on November 30, 2018. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on November 30, 2018.

Full copies of text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department's website at www.wildlife.state.nm.us/commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or

participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

GAME AND FISH, DEPARTMENT OF

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Friday, November 30, 2018, beginning at 8:00 a.m. at the Roswell Convention and Civic Center, 912 N. Main St, Roswell, NM 88201, to hear and consider action as appropriate on the following: Presentation of proposed changes to the Hunting and Fishing Manner and Method rule.

Synopsis:

The proposal is to adopt a new Hunting and Fishing Manner and Method rule, 19.31.10 NMAC, which will become effective April 1, 2019.

The proposed new rule has all the regulations pertaining to the manner and method of take for protected species. The rule will contain the pertinent definitions for the legal take while hunting or fishing. The rule will address how a person can legally possess or sell a protected species as well as the use of motorized vehicles and aircraft while hunting. The rule also lists all the manner and method penalty assessment misdemeanors

that are allowed to be cited. A more detailed summary, and the full text of changes, is available on the Department's website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes to the Hunting and Fishing Manner and Method rule at DGF-FieldOpsComments@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on November 29, 2018. The final proposed rule will be voted on by the Commission during a public meeting on November 30, 2018. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on November 30, 2018.

Full copies of text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department's website at www.wildlife.state.nm.us/commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

**GOVERNOR'S
COMMISSION ON
DISABILITY**

**NOTICE OF PROPOSED
RULEMAKING**

NOTICE IS HEREBY GIVEN that the New Mexico Governor's Commission on Disability (GCD or department) will hold a public rulemaking hearing on **November 30, 2018**. The hearing will begin at 10:00 a.m. and will be held on the second floor of the Toney Anaya Building, Rio Grande Room Santa Fe, New Mexico 87501 (2550 Cerrillos Road, Santa Fe, NM 87507). The purpose of the rulemaking hearing is to take public comment regarding proposed repeal of **9.4.20 NMAC - GOVERNOR'S COMMITTEE ON CONCERNS OF THE HANDICAPPED BY-LAWS** and replacing it with **9.4.20 NMAC - GOVERNOR'S COMMISSION ON DISABILITY RULES**. Following the rule hearing, the Commission will convene a board meeting to adopt the rules and take care of regular board business.

Purpose:

The purpose of this proposed rule is to repeal and replace 9.4.20 NMAC "Governor's Committee on Concerns of the Handicapped By-Laws" and consolidate and update any policies and procedures previously addressed including updating the department name from the GOVERNOR'S COMMITTEE ON CONCERNS OF THE HANDICAPPED to the GOVERNOR'S COMMISSION ON DISABILITY RULES. The proposed rule also incorporates Section 22 of 9.4.20.NMAC - Residential Accessory Modification Program (RAMP) to establish rules and regulations for the RAMP.

Summary of proposed changes:

The proposed repeal of 9.4.20 NMAC is to consolidate and update all regulations related to the Governor's Commission on Disability. The regulations previously addressed in 9.4.20 NMAC will be updated within proposed 9.4.20 NMAC, Governor's Commission on Disability Rules.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rules are available at GCD located at 491 Old Santa Fe Trail, Santa Fe, NM 87505-2100. The proposed rules are also posted on the GCD website and may be accessed at <http://www.gcd.state.nm.us/> under the "Quick Links" section titled "Proposed Rules" of the main web page. To request that a copy of the proposed statement of repeal and replace be sent to you by mail or e-mail, please contact gcd@state.nm.us or 1-877-696-1470.

A public hearing will be held from 10:00 a.m. until 11:00 a.m. on the second floor of the Toney Anaya Building, Rio Grande Room Santa Fe, New Mexico 87501 (2550 Cerrillos Road, Santa Fe, NM 87507), on November 30, 2018. Any person who is or may be affected by this proposed rule may appear and testify. **Interested persons may submit written comments to GCD at 491 Old Santa Fe Trail, Santa Fe, NM 87505 or GCD@state.nm.us. Written comments must be received no later than 5:00 p.m. on November 29, 2018.** Please note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 28-10-2 NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact 1-877-696-1470 or email GCD@state.nm.us at least ten (10) business days prior to the hearing.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Monday, December 3, 2018 from 9 a.m. to 12:00 p.m. (MST). The purpose of the public hearing is to receive public input on the proposed repeal and replace of 6.19.8 NMAC, Grading of Public Schools and the proposed repeal of 6.19.1 NMAC, Public School Accountability: General Provisions. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement regarding the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text.

The purpose of the proposed repeal and replace of **6.19.8 NMAC, Grading of Public Schools** is to align the implementation of the A-B-C-D-F Schools Rating Act (22-2E-1 to 22-2E-4 NMSA 1978) and the New Mexico ESSA plan approved by the U.S. Department of Education in compliance with Section 1111 of the Elementary and Secondary Education Act as amended by the Every Student Succeeds Act to establish a consistent school rating system for grading public schools. Additionally, this rule updates criteria for rating public schools and provides options

for students enrolled in a failing school. The rule outlines criteria for the identification and rating of supplemental accountability model schools.

The purpose of the proposed repeal of **6.19.1 NMAC, Public School Accountability: General Provisions** is to repeal a rule adopted under the provisions of the federal No Child Left Behind Act.

Statutory Authorizations: Sections 22-2-1, 22-2-2, and the A-B-C-D-F School Rating Act 22-2E-1 to 22-2E-4, 22-2C-4, 22-2C-5, and 22-2C-11 NMSA 1978 and the federal Every Student Succeeds Act.

No technical information served as a basis for this proposed rule change.

Stakeholder Engagement.

Stakeholder engagement regarding the New Mexico ESSA plan was held. Stakeholders included district and school leaders, teachers, and parents and families. Requirements for the school rating system were determined in partnership and with the approval of the U.S. Department of Education.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to the Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. All written comments must be received no later than 5:00 p.m. (MST) on Monday, December 3, 2018. The PED encourages the early submission of written comments. The public comment period is from Tuesday, October 30, 2018 to Monday, December 3, 2018 at 5:00 p.m. (MST). The PED will review all feedback received during the public comment period and issue communication regarding the final decision at a later date.

Copies of the proposed new rule may

be accessed through the page titled "Rule Notification" on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from the Policy Division at (505) 827-6452 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact the Policy Division at (505) 827-6452 as soon as possible before the date of the public hearing. The PED requires at least ten (10) calendar days' advance notice to provide any special accommodations requested.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Thursday, December, 6, 2018 from 9:00 a.m. to 11:00 a.m. (MST). The purpose of the public hearing is to receive public input on the proposed new rule 6.29.17 NMAC, New Mexico Computer Science Standards. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement regarding the rule. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text.

The purpose of the proposed new rule 6.29.17 NMAC, New Mexico Computer Science Standards is to adopt the New Mexico Computer Science Standards. These standards are mandatory for any courses in kindergarten through

grade 12 in which computer science content is being taught.

Statutory Authorizations: Sections 22-2-2 and 22-2C-3 NMSA 1978.

No technical information served as a basis for this proposed rule change.

Stakeholder Engagement.

Stakeholder engagement regarding this proposed rule change was held. Stakeholders included teachers and school staff from across the state.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to the Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. All written comments must be received no later than 5:00 p.m. (MST) on Thursday, December 6, 2018. The PED encourages the early submission of written comments. The public comment period is from Tuesday, October 30, 2018 to Thursday, December 6, 2018 at 5:00 p.m. (MST). The PED will review all feedback received during the public comment period and issue communication regarding the final decision at a later date.

Copies of the proposed new rule may be accessed through the page titled "Rule Notification" on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from the Policy Division at (505) 827-6452 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact the Policy Division at (505) 827-6452 as soon as possible before the date set for the public hearing. The PED requires at least ten

(10) calendar days' advance notice to provide any special accommodations requested.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Friday, December 7, 2018 from 2:00 p.m. to 5:00 p.m. (MST). The purpose of the public hearing is to receive public input on the proposed repeal of 6.60.10 NMAC, Mentorship Programs for Beginning Teachers to be replaced with 6.60.10 NMAC, Mentorship Programs for Teachers. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement regarding the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text. The purpose of the proposed repeal of 6.60.10 NMAC, Mentorship Programs for Beginning Teachers to be replaced with 6.60.10 NMAC, Mentorship Programs for Teachers is to update requirements for statewide mentorship programs to provide teachers an effective transition into the teaching profession, retain capable teachers, improve the achievement of students, and improve the overall success of schools. This rule change aligns mentorship program requirements to the most current standards for effective practice and clarifies practices of communication between districts and the PED.

Statutory Authorizations: 22-2-1 and 22-10A-9 NMSA 1978.

No technical information served as a basis for this proposed rule change.

Stakeholder Engagement.

Stakeholder engagement regarding this proposed rule change was held. Stakeholders included teachers, school leaders, directors of human resources and district superintendents from across the state.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to the Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. All written comments must be received no later than 5:00 p.m. (MST) on Friday, December 7, 2018. The PED encourages the early submission of written comments. The public comment period is from Tuesday, October 30, 2018 to Friday, December 7, 2018 at 5:00 p.m. (MST). The PED will review all feedback received during the public comment period and issue communication regarding the final decision at a later date.

Copies of the proposed new rule may be accessed through the page titled "Rule Notification" on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from the Policy Division at (505) 827-6452 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact the Policy Division at (505) 827-6452 as soon as possible before the date of the public hearing. The PED requires at least ten (10) calendar days' advance notice to provide any special accommodations requested.

**PUBLIC EDUCATION
DEPARTMENT**

**NOTICE OF PROPOSED
RULEMAKING**

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Friday, December 7, 2018 from 2:00 p.m. to 5:00 p.m. (MST). The purpose of the public hearing is to receive public input on the proposed new rule 6.65.4 NMAC, Teacher Leader Development Framework. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement regarding the rule. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text. The purpose of the proposed new rule 6.65.4 NMAC, Teacher Leader Development Framework is to establish criteria for teacher leader development opportunities provided by the PED. The teacher leader development framework shall ensure that the PED provides teacher leader engagement and networking opportunities and a platform for direct communication with PED policymakers and the Secretary of the New Mexico Public Education Department.

Statutory Authorizations: 22-1-1.2 (C) and 22-1-1.2 (B) (1) NMSA 1978.

No technical information served as a basis for this proposed rule change.

Stakeholder Engagement.

Stakeholder engagement regarding this proposed rule change was held. Stakeholders included teachers and school staff from across the state.

Public Comment. Interested parties may provide comment at the public hearing or may submit

written comments by mail to the Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. All written comments must be received no later than 5:00 p.m. (MST) on Friday, December 7, 2018. The PED encourages the early submission of written comments. The public comment period is from Tuesday, October 30, 2018 to Friday, December 7, 2018 at 5:00 p.m. (MST). The PED will review all feedback received during the public comment period and issue communication regarding the final decision at a later date.

Copies of the proposed new rule may be accessed through the page titled "Rule Notification" on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from the Policy Division at (505) 827-6452 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact the Policy Division at (505) 827-6452 as soon as possible before the date of the public hearing. The PED requires at least ten (10) calendar days' advance notice to provide any special accommodations requested.

**PUBLIC EDUCATION
DEPARTMENT**

**NOTICE OF PROPOSED
RULEMAKING**

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Tuesday, December 4, 2018 from

9 a.m. to 12:00 p.m. (MST). The purpose of the public hearing is to receive public input on the proposed amendments to 6.80.4 NMAC, Charter School Application and Appeal Requirements. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement regarding the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text. The purpose of the proposed amendments to 6.80.4 NMAC, Charter School Application and Appeal Requirements is in part to implement regulations reflecting the academic performance framework utilized by the all chartering authorities including the Public Education Commission (PEC) in relation to renewal decisions. This rule change will further solidify the authority of the PEC and local chartering authorities to make decisions regarding applications for renewal of charters. The amended rule also addresses procedural matters relating to appeals of such decisions to the Secretary of the New Mexico Public Education Department.

Statutory Authorizations: Sections 22-2-1, 22-8-1 through 22-8-47 and 22-8B-1 through 22-8B-17 NMSA 1978.

No technical information served as a basis for this proposed rule change.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to the Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. All written comments must be received no later than 5:00 p.m. (MST) on Tuesday, December 4, 2018. The PED encourages the early

submission of written comments. The public comment period is from Tuesday, October 30, 2018 to Tuesday, December 4, 2018 at 5:00 p.m. (MST). The PED will review all feedback received during the public comment period and issue communication regarding the final decision at a later date.

Copies of the proposed new rule may be accessed through the page titled "Rule Notification" on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from the Policy Division at (505) 827-6452 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact the Policy Division at (505) 827-6452 as soon as possible before the date of the public hearing. The PED requires at least ten (10) calendar days' advance notice to provide any special accommodations requested.

**REGULATION AND LICENSING DEPARTMENT
SUBSTITUTE CARE ADVISORY
COUNCIL**

**NOTICE OF PUBLIC RULE
HEARING**

The Substitute Care Advisory Council (Council) will hold a rule hearing on Monday, December 17, 2018, at 1:30 P.M. at the Regulation and Licensing Department Toney Anaya Hearing Room 2, which is an accessible facility, at 2550 Cerrillos Road, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Shelly Bucher at 505-469-4781 by November 26, 2018, or as soon as possible.

Pursuant to Section 32A-8-4(F), the Council is to adopt reasonable rules related to the functions and procedures of the substitute care review boards and the Council. Rules shall establish training requirements for substitute care review board members, establish criteria for council designation of cases for substitute care review board review; establish procedures for substitute care review board review of designated cases; establish criteria for membership and tenure on and operating procedures for substitute care review boards; specific the information needed for designated cases to be monitored by substitute care review boards; and specify case information to be tracked and reported to the Council.

The Council may consider the following items of rulemaking at the meeting:

Repeal:
8.26.7 NMAC - Citizen Substitute Care Review.

Replace with:
8.26.7 NMAC - Citizen Substitute Care Review.

Synopsis:
The proposed replacement rule clarifies the scope, statutory authority, objective, definitions, membership requirements, advisory committee, designation of cases for review, case information needed, operations of boards and tracking and reporting of information; and outlines the responsibilities of the Council.

A copy of the full text of the proposed rule may be accessed at the Regulation and Licensing Department website (www.rld.state.nm.us), or by contacting Shelly Bucher at shelly.bucher@state.nm.us, or 505-469-4781.

Interested persons may submit comments on the replacement rule at the rule hearing or may submit written comments prior to the hearing via email to Ms. Bucher. Written

comments prior to the hearing are accepted until 5 p.m. on December 10, 2018 and will be posted within 3 business days of receipt on the website for public review. At the hearing the Council will take oral and written comments related to the replacement rule. Persons offering written comments at the hearing must have eight (8) copies for the Council to review; oral comments will be subject to time limitations.

**TAXATION AND REVENUE
DEPARTMENT**

**NOTICE OF HEARING AND
PROPOSED RULES**

The New Mexico Taxation and Revenue Department proposes to amend the following rules:

Gross Receipts and Compensating Tax Act, Section 7-9-3.4 NMSA 1978

3.2.1.11 NMAC - Construction

Gross Receipts and Compensating Tax Act, Section 7-9-51 NMSA 1978

3.2.209.9 NMAC - Items That Are Ingredient or Component Parts - Oil Fields

3.2.209.11 NMAC - Sale of Water

3.2.209.12 NMAC - Forms and Fuel

3.2.209.13 NMAC - Welding Rods

3.2.209.14 NMAC - Paint and Painting Supplies

3.2.209.15 NMAC - Sprinkler Systems

3.2.209.18 NMAC - Windows and Doors

3.2.209.21 NMAC - Compensating Tax on Materials (repeal)

3.2.209.22 NMAC - Ingredient and Component Parts of a Construction Project

3.2.209.23 NMAC - Construction Materials Used in Nontaxable Construction Projects

3.2.209.24 NMAC - Materials Used in Nontaxable Projects (repeal)

3.2.209.26 NMAC - Materials Used in Government or Non-Profit Projects (new)

Gross Receipts and Compensating Tax Act, Section 7-9-54 NMSA 1978

- 3.2.212.10 NMAC - Construction Performed for a Governmental Agency
 3.2.212.14 NMAC - Landscaping
 3.2.212.21 NMAC - Government Credit or Procurement Card Purchases (repeal)
 3.2.212.22 NMAC - Tangible Personal Property in Projects Financed by Industrial Revenue or Similar Bonds
 3.2.212.24 NMAC - Custom Software

Gross Receipts and Compensating Tax Act, Section 7-9-60 NMSA 1978

- 3.2.218.9 NMAC - Services, Leases, Construction Services
 3.2.218.11 NMAC - Sale of Meals
 3.2.218.13 NMAC - Sale of Gases
 3.2.218.14 NMAC - Single Member Limited Liability Company Whose Sole Member is a 501(C)(3) Organization

The proposals were placed on file in the Office of the Secretary on October 18, 2018. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about December 27, 2018.

A public hearing will be held on the proposals on Thursday, November 29, 2018, at 10:00 a.m. in the Secretary's Conference Room on the third floor of the Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Alicia Romero at alicia.romero@state.nm.us. The Taxation and Revenue Department will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least 10 calendar days prior to the scheduled hearing. Accessible copies of the proposals are available upon request; contact the Tax Policy Office at policy.office@state.nm.us. Comments on the proposals are invited. Comments may be made in

person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 or by email to policy.office@state.nm.us on or before November 29, 2018, at 9:00 a.m. All written comments received by the agency will be posted on www.tax.newmexico.gov no more than 3 business days following receipt to allow for public review.

3.2.1.11**CONSTRUCTION:****A. Construction service as distinguished from other services.**

(1) The term "construction" is limited to the activities, or management of the activities, which are listed in Section 7-9-3.4 NMSA 1978 and which physically change the land or physically create, change or demolish a building, structure or other facility as part of a construction project.

(2) "Construction" does not include services that do not physically change the land or physically create, change or demolish a building, structure or other facility as part of a construction project, even though they may be related to a construction project. The fact that a service may be a necessary prerequisite or ancillary to construction or a construction project does not in itself make the service a construction service. Excluded from the meaning of "construction" are activities such as, but not limited to: hauling to or from the construction site, maintenance work, landscape upkeep, the repair of equipment or appliances, laboratory work or accounting, architectural, engineering, surveying, traffic safety or legal services. Some of these activities may qualify as construction-related services; see Section 7-9-52 NMSA 1978.

B. Construction includes: Pursuant to Section 7-9-3.4 NMSA 1978 the term "construction" includes the painting of structures, the installation of sprinkler systems and

the building of irrigation pipelines.

C. Construction does not include:

(1) The term "construction" does not include the installation of carpets or the installation of draperies, but see 3.2.209.25 NMAC.

(2) The term "construction", as defined in Section 7-9-3.4 NMSA 1978, does not include leasing or renting tangible personal property, such as construction equipment, with or without an operator but see Section 7-9-52.1 NMSA 1978 for transactions on or after January 1, 2013.

D. Oil and gas industry construction:

(1) "Construction", as this term is used in Section 7-9-3.4 NMSA 1978, includes the following activities related to the oil and gas industry:

(a) building and altering of gas compression plant facilities and pump stations, including: clearing of property sites; excavating for foundations; building and setting foundation forms; mixing, pouring, and finishing concrete foundations for buildings and plant equipment on foundations; fabricating and installing piping; installing electrical equipment, insulation, and instruments; erecting buildings; placing sidewalks, drives, parking areas; installing storage tanks; and dismantling equipment and reinstalling elsewhere;

(b) building of or extension of gas-gathering pipelines, including: connecting gathering lines to lease separators, fabricating and installing meter runs, digging trenches, beveling pipe, welding pipe, wrapping pipe, backfilling trenches, testing pipelines, fabricating and installing pipeline drips and installing conduit for pipelines crossing roads or railroads;

(c) building of or extension of product pipelines, including: building pressure-reducing stations; connecting pipelines to storage tanks, fabricating and installing valve assemblies, digging trenches, beveling pipe,

welding pipe, wrapping pipe, laying pipe, backfilling trenches, testing pipelines and installing conduit for pipeline crossing roads or railroads;

(d)

building secondary-recovery systems, including: excavating and building foundations, installing engines and water pumps, installing pipelines for water intake, installing pipelines for carrying pressured water to input wells, installing instruments and controls and erecting buildings;

(e)

installing lease facilities, including: installing wellheads, flow lines, chemical injectors, separators, heater-treaters, tanks, stairways and walkways; building foundations; and setting pump units and engines, central power units and rod lines;

(f)

demolishing pipelines, including: digging trenches to uncover pipelines, dismantling and removing drips and meter runs, backfilling trenches, tamping and smoothing right-of-way;

(g)

increasing pipeline capacity, including: removing small pipelines and replacing with larger lines, and digging adjoining trenches and laying new pipelines;

(h)

repairing plant, including: replacing tubing in atmospheric condensers, replacing plugged boiler tubing; removing cracked, broken or damaged portions of foundations and replacing anew; replacing compressors, compressor engines, or pumps; and regrouting and realigning compressors;

(i)

drilling wells, including: drilling ratholes, excavating cellars and pits, casing crew services, cementing services, directional drilling, drill stem testing and fishing jobs in connection with drilling operations;

(j)

general dirt work, including: building roads, paving with caliche or other surfacing materials; digging pits, trenches, and disposal ponds, building firewalls and foundation footing; and constructing pads from caliche or other materials.

(2)

“Construction”, as the term is used in Section 7-9-3.4 NMSA 1978, does not include the following activities related to the oil and gas industry:

(a)

well servicing, including: acidizing and fracturing formations; pulling and rerunning rods or tubing; loading or unloading a well; shooting; scraping paraffin; steaming flow lines and tubing; inspecting equipment; fishing jobs, other than in connection with drilling operations; bailing cave-ins; reverse circulating and resetting packers;

(b)

lease and plant maintenance, including: cleaning; weed-control; preventive care of machinery, pipelines, gathering systems, and engines; tank cleaning; testing of flow lines by pressure or X-ray means; cleaning lines and tubing by acid treatment or mechanical means, or replacing and restoring machinery components;

(c)

transporting equipment, including: transporting drilling rigs, rigging-up and rigging-down, and hauling water and mud;

(d)

salvaging of materials from a “production unit”, as defined in the Oil and Gas Emergency School Tax Act, such as: killing the gas pressure, removing casing heads, welding pull nipples on the casing, cutting or shooting casing strings, pulling casings from the well bore, cementing to fill the abandoned well or plug the well, filling the cellar, and welding steel pipe markers;

(e)

rental of equipment such as: power tongs, blowout preventors, tanks, pipe racks, core barrels, integral parts of a drilling rig or integral parts of a circulation unit, for transactions on or after January 1, 2013, see Section 7-9-52.1 NMSA 1978;

(f)

measuring, “logging” and surveying services in connection with the drilling of an oil or gas well are construction-related services as of January 1, 2013, see Section 7-9-52

NMSA 1978. “Logging” as that term is used in this subsection is a method of testing or measuring an oil or gas well by recording various aspects of the geological formations penetrated by the well.

E. Construction includes prefabricated buildings; prefabricated versus modular buildings:

(1)

The sale of prefabricated buildings, whether constructed from metal or other material, is the sale of construction. A prefabricated building is a building designed to be permanently affixed to land and manufactured (usually off-site) in components or sub-assemblies which are then assembled at the building site. Prefabricated buildings are not designed to be portable nor are they capable of being relocated.

(2)

A portable building or a modular building is a building manufactured (usually off-site) which is designed to be moveable or is capable of being relocated and, when delivered to the installation site, generally requires only blocking, levelling and, in the case of modular buildings, joining of modules. For the purposes of Subsection F of 3.2.1.11 NMAC, neither portable buildings, modular buildings nor manufactured homes defined as vehicles by Section 66-1-4.11 NMSA 1978 are prefabricated buildings.

F. Construction materials and services; landscaping:

(1)

Landscaping items, such as ornaments, rocks, trees, plants, shrubs, sod and seed, which are sold to a person engaged in the construction business, that are an integral part of the construction project, are construction materials. Persons who seed, lay sod or install landscape items in conjunction with a construction project are performing construction services.

(2)

Receipts from selling landscaping items to, and from seeding, laying sod or installing landscape items for, persons engaged in the construction

business may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate to the seller as provided in Section 7-9-51 and Section 7-9-52 NMSA 1978, respectively.

G. Nontaxable transaction certificates:

(1) Nontaxable transaction certificates are available from the department for persons who are engaged in the construction business and performing activities, as set forth in Sections 7-9-3.4, 7-9-52 and 7-9-52.1 NMSA 1978 to execute to providers of construction materials, construction services, construction-related services and lessors of construction equipment. See 3.2.201.11 NMAC for additional requirements on construction contractors to obtain nontaxable transaction certificates.

(2) Only persons who are licensed by the state of New Mexico as construction contractors may apply for and execute nontaxable transaction certificates under the provisions of Sections 7-9-51 NMSA 1978, 7-9-52 NMSA 1978, and 7-9-52.1 NMSA 1978, except that a person who performs construction activities as defined in Section 7-9-3.4 NMSA 1978 in the ordinary course of business, and who is exempt from the laws of the state of New Mexico requiring licensing as a contractor may apply for and execute such certificates.

[H. Fixtures:

(1)

Construction includes the sale and installation of “fixtures” such as kitchen equipment, library equipment, science equipment and other miscellaneous equipment installed so that it becomes firmly attached to the realty. Fixtures are considered to be items of tangible personal property which are necessary or essential to the intended use of a construction project and which are so firmly attached to the realty as to constitute a part of the construction project.

(2) Receipts from the sale of furniture, kitchen equipment, library shelves and other furniture or equipment sold

on an assembled basis that does not become a “fixture” is a sale of tangible personal property and not construction.]

[I] H. Construction materials; general:

(1) The term “construction materials” means tangible personal property which is intended to become an ingredient or component part of a construction project.

(2) Tangible personal property intended ultimately to become an ingredient or component part of a construction project although not purchased for a specific project is nonetheless a construction material. *Example:* A government agency makes bulk purchases of asphalt which is stored by the agency for use in future road construction or repair projects. The asphalt is a construction material.

(3) Tools, equipment and other tangible personal property not designed or intended to become ingredients or component parts of a construction project are not construction materials if such materials accidentally become part of a construction project. *Example:* A workman accidentally drops a pair of gloves and a hammer into a form into which concrete is being poured. Because the gloves and the hammer are not intended to be included in the concrete structure, they are not construction materials.

[J. Meaning of “building”:

(1) As used in Section 7-9-3.4 NMSA 1978, the noun “building” means a roofed and walled structure designed for permanent use but excludes an enclosure so closely combined with the machinery or equipment it supports, houses or serves that it must be replaced, retired or abandoned contemporaneously with the machinery or equipment.

(2) A “building” includes the structural components integral to the building and necessary to the operation or maintenance of the building but does not include equipment, systems or

components installed to perform, support or serve the activities and processes conducted in the building and which are classified for depreciation purposes as 3-year property, 5-year property, 7-year property, 10-year property or 15-year property by Section 168 of the Internal Revenue Code or, if the Internal Revenue Code is amended to rename or replace these depreciation classes, would have been classified for depreciation purposes as 3-year property, 5-year property, 7-year property, 10-year property or 15-year property but for the amendment.

(3) Example:-

A building may include any of the following equipment, systems or components:

(a) elevators and escalators used in whole or in part to move people;

(b) heating, cooling and air conditioning systems except for air conditioning and air handling systems and components, separately depreciated under Section 168, installed to meet temperature, humidity or cleanliness requirements for the operation of machinery or equipment or the manufacture, processing or storage of products;

(c) electrical systems except for electrical systems and components, separately depreciated under Section 168, installed to power machinery or equipment operated as part of the activities and processes conducted in the building and not necessary to the operation or maintenance of the building; and

(d) plumbing systems except for plumbing systems and components, separately depreciated under Section 168, installed to perform, serve or support the activities and processes conducted in the building, such as for the handling, transportation or treatment of ingredients, chemicals, waste or water for a manufacturing or other process.]

[9/29/1967, 12/5/1969, 3/9/1972, 3/20/1974, 7/26/1976, 6/18/1979, 11/8/1979, 4/7/1982, 5/4/1984,

4/2/1986, 11/26/1990, 3/19/1992, 1/13/1996, 11/15/1996, 5/15/1997, 9/15/1997, 3.2.1.11 NMAC - Rn & A, 3 NMAC 2.1.11, 10/31/2000; A, 12/30/2003; A, 12/14/2012; A, xx/xx/2018]

3.2.209.9 ITEMS THAT ARE INGREDIENT OR COMPONENT PARTS - OIL FIELDS:

Receipts from the sale of casing, cement, shoes and float equipment, casing heads and well heads may be deducted from gross receipts if the other requirements of Section 7-9-51 NMSA 1978 are met and a nontaxable transaction certificate [is issued] or alternative evidence is provided by a well drilling company performing a turnkey project, as these items become ingredient or component parts of the construction project.

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.9 NMAC - Rn, 3 NMAC 2.51.9 & A, 5/31/2001; A, xx/xx/2018]

3.2.209.11 SALE OF WATER:

Receipts from selling water to a construction company may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate or alternative evidence and if the water becomes an ingredient or component part of the finished product such as in concrete or in moistening fill. However, if the water is used as merely a lubricating agent, such as in well drilling, it is not a component part of the finished product and [is] the receipts are not deductible.

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.11 NMAC - Rn, 3 NMAC 2.51.11, 5/31/2001; A, xx/xx/2018]

3.2.209.12 FORMS AND FUEL:

A. Receipts from selling lumber for forms and fuel

for trucks to a person engaged in the construction business may not be deducted from gross receipts because neither the lumber nor the fuel actually becomes an ingredient or component part of the finished product. However, if the form lumber is later used for sheeting in the construction project, the form lumber may be purchased with a nontaxable transaction certificate (nttc) or alternative evidence pursuant to Section 7-9-51 NMSA 1978.

~~[B.]~~ If, in the situation described in Subsection A of Section 3.2.209.12 NMAC, the person engaged in the construction business delivered an nttc to a supplier for the purchase of lumber and the buyer converts some to use as forms and if the supplier did not pay the gross receipts tax on those receipts, the person engaged in the construction business will be subject to the compensating tax.

~~C.]~~ B. The receipts from selling screed pins used in plastering and forms which must, by reason of design, be left in place after concrete has been poured over them may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers ~~[an]~~ a nontaxable transaction certificate (nttc) or alternative evidence.

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.12 NMAC - Rn, 3 NMAC 2.51.12 & A, 5/31/2001; A, xx/xx/2018]

3.2.209.13 WELDING RODS:

Receipts from selling welding electrodes (welding rods), which melt to provide filler or fused metal, to a person engaged in the construction business may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) or alternative evidence to the seller [H] and the buyer delivering the nttc ~~[does not use]~~ uses the welding electrodes in such a way that they become an ingredient or component part of the construction project ~~[or~~

~~comply with other requirements of Section 7-9-51 NMSA 1978; compensating tax will be imposed upon the buyer].~~

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.13 NMAC - Rn, 3 NMAC 2.51.13 & A, 5/31/2001; A, xx/xx/2018]

3.2.209.14 PAINT AND PAINTING SUPPLIES:

A. The receipts from the sale of paint, filler, thinner, varnish or similar items to a person engaged in the painting business who delivers a nontaxable transaction certificate (nttc) or alternative evidence to the seller may be deducted from the seller's gross receipts.

~~[B.]~~ If the person engaged in the painting business does not use the items purchased with the nttcs as required by Paragraphs (1) and (2) of Subsection B of Section 7-9-51 NMSA 1978, the compensating tax is due.

~~C.]~~ B. Receipts from the sale of brushes, sandpaper, scrapers, sand for sandblasting, machinery and similar items used in the painting business to persons engaged in the painting business may not be deducted from gross receipts because such items do not become an ingredient or component part of the construction project.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.14 NMAC - Rn, 3 NMAC 2.51.14 & A, 5/31/2001; A, xx/xx/2018]

3.2.209.15 SPRINKLER SYSTEMS:

Receipts from selling pipes, joints, nozzles and similar items of tangible personal property which become ingredient or component parts of a sprinkler system to a person engaged in the business of selling and installing sprinkler systems may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate or alternative evidence.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.15 NMAC - Rn, 3 NMAC 2.51.15, 5/31/2001]

3.2.209.18 WINDOWS AND DOORS:

A. Receipts from the sale of screens, screen doors and windows to a person engaged in the construction business may be deducted from the seller's gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) or alternative evidence and the person engaged in the construction business uses the screens, screen doors and windows in the manner described in Paragraphs (1) and (2) of Subsection B of Section 7-9-51 NMSA 1978.

~~[**B.** If the person engaged in the construction business does not use the screens, screen doors and windows purchased with the nttc as required by Paragraphs (1) and (2) of Subsection B of Section 7-9-51 NMSA 1978, the compensating tax is due.~~

~~[**C.] **B.** Receipts from the sale of aluminum panel, aluminum T bar, aluminum angle, bulk or roll screen stock and jalousie glass to a person who produces screens, screen doors or windows and sells them installed in a construction project may be deducted from the seller's gross receipts pursuant to Section 7-9-51 NMSA 1978 if the buyer delivers an nttc or alternative evidence.**~~

~~[**D.** If the person engaged in the construction business does not use the items described in Subsection C of Section 3.2.209.18 NMAC and purchased with the nttc as required by Paragraphs (1) and (2) of Subsection B of Section 7-9-51 NMSA 1978, the compensating tax is due.]~~

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.18 NMAC - Rn, 3 NMAC 2.51.18 & A, 5/31/2001; A, xx/xx/2018]

3.2.209.22 INGREDIENT

AND COMPONENT PARTS OF A CONSTRUCTION PROJECT:

In determining whether tangible personal property will become an ingredient or component part of a construction project, the department will use the following criteria, but not exclusively:

~~[**A.** Did the tangible personal property become "fixtures" as defined under Subsection I of Section 3.2.1.11 NMAC.~~

~~[**B.] **A.** Was the person performing the work using the tangible personal property required to be licensed under the Construction Industries Licensing Act, Sections 60-13-1 to 60-13-59 NMSA 1978.**~~

~~[**C.] **B.** Did the work for which the tangible personal property was used require a permit from one or more of the trade boards established by the Construction Industries Licensing Act or from a municipal building or mechanical department. [6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.22 NMAC - Rn, 3 NMAC 2.51.22 & A, 5/31/2001; A, xx/xx/2018]**~~

3.2.209.23 CONSTRUCTION MATERIALS USED IN NONTAXABLE CONSTRUCTION PROJECTS:

A. A seller of [~~tangible personal property~~] construction material may not claim the deduction from gross receipts provided by Section 7-9-51 NMSA 1978, or accept a nontaxable transaction certificate (NTTC) in good faith as required by Section 7-9-43 NMSA 1978, when the seller can reasonably determine that the [~~tangible personal property~~] construction material sold will be incorporated into a construction project which will not be subject to gross receipts tax upon completion because it is located outside New Mexico.

B. A seller can reasonably determine that a project is located outside New Mexico when the seller has documents identifying the location of the project.

C. No construction project located outside New Mexico

will be subject to gross receipts tax upon completion.

~~[**D.** This version of 3.2.209.23 NMAC applies retroactively to transactions occurring on or after March 7, 2000.]~~

[1/24/1986, 4/2/1986, 11/26/1990, 11/15/1996, 3.2.209.23 NMAC - Rn & A, 3 NMAC 2.51.23, 10/31/2000; A, xx/xx/2018]

3.2.209.26 MATERIALS USED IN GOVERNMENT OR NON-PROFIT PROJECTS:

Receipts from the sale to a person engaged in the construction business who delivers a nontaxable transactions certificate or alternative evidence to the seller of construction materials that are tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property by Section 168 of the Internal Revenue Code of 1986 as that section may be amended or renumbered, may be deducted if the construction material will ultimately be deductible pursuant to Section 7-9-54 or 7-9-60 NMSA 1978 provided that the remaining construction services portion of the project is subject to gross receipts tax.

[3.2.209.26 NMAC - N, xx/xx/2018]

3.2.212.10 CONSTRUCTION PERFORMED FOR A GOVERNMENTAL AGENCY:

A. [~~The~~] Except as provided in Paragraph B, receipts from performing a construction project for a governmental agency are receipts derived from performing a service and are not deductible pursuant to Section 7 9 54 NMSA 1978. The deduction is not available whether the materials are billed separately on the same contract as the construction services or are billed under a separate contract.

~~[**B.** Example: M, a construction company, contracts to build a building for the New Mexico general services department. M fails to include in its contract the cost of the gross receipts tax and therefore~~

does not report the tax. After the tax has been assessed, M, in a hearing before the department, contends that it does not owe the tax. M says:

~~(1) that the tax is not applicable because, if it were, it would only mean that M would include the applicable tax in making its bid; that it would then pay the tax and bill the state the cost of the tax which only results in taking money from one state fund and putting it in another, a useless process;~~

~~(2) that it is actually selling tangible personal property to the state in the form of the materials which make up the building. The answer to M's first contention is simply that the law does not allow such a deduction. This is true even though the effect of the tax is simply to transfer money from one state fund to another. The answer to the second contention is that the law specifically bars application of the deduction provided by Section 7-9-54 NMSA 1978 for receipts from selling construction materials, whether separately stated under a contract for construction services or billed under a contract for materials only. Even absent the specific prohibition, the deduction is applicable only upon the sale of tangible personal property to the state. By definition M is selling the state a service. The gross receipts derived from performing the service for the state are not deductible, and it is of no consequence that construction materials may be billed separately.~~

~~C. Section 3.2.212.10 NMAC applies to transactions occurring on or after July 1, 1989.]~~

B. Receipts from the sale of construction material that is tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, are deductible. The amount of the deduction is the asset basis, as those terms are defined by the Internal

Revenue Code of 1986, as that code may be amended or renumbered.

C. Example: A contractor enters a contract with a municipality to construct a building and to furnish and equip it. Construction is a service, and receipts from selling construction, including construction materials except for certain tangible personal property, are not deductible under Section 7-9-54 NMSA 1978. An analysis is performed to distinguish the value of the construction, construction materials and tangible personal property included in the project. The contractor's receipts from the sale of tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property including the indirect costs related to the asset basis, pursuant to Section 168 of the Internal Revenue Code, as that section may be amended or renumbered, are deductible provided the analysis includes sufficient information to demonstrate that the requirements of Section 7-9-54 NMSA 1978 are met. [9/29/1967, 12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.10 NMAC - Rn & A, 3 NMAC 2.54.10, 5/31/2001; A, xx/xx/2018]

3.2.212.14 LANDSCAPING:

A. Except when the landscape items are part of a construction project, receipts from selling and installing landscape items such as plants, shrubs, sod, seed, trees, rocks and ornaments are receipts from the sale of tangible personal property. Therefore, the receipts from the sale and installation of these landscape items pursuant to a contract with a governmental agency may be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978. Receipts from selling and installing these landscape items as part of a construction project may not be deducted pursuant to Section 7-9-54 NMSA 1978. This version of

Subsection A of Section 3.2.212.14 NMAC applies to transactions occurring on or after [July 1, 2000] March 2, 2018.

B. Receipts from the installation of sprinkler systems are receipts from the performance of a service and are not receipts from selling tangible personal property. Therefore, receipts from the installation of sprinkler systems for a governmental agency may not be deducted from gross receipts pursuant to Section 7-9-54 NMSA 1978. [3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996, 3.2.212.14 NMAC - Rn & A, 3 NMAC 2.54.14, 10/31/2000; A, xx/xx/2018]

3.2.212.22 TANGIBLE PERSONAL PROPERTY IN PROJECTS FINANCED BY INDUSTRIAL REVENUE OR SIMILAR BONDS:

A. For the purposes of this section, a "bond project" is an arrangement entered into under the authority of the Industrial Revenue Bond Act, the County Industrial Revenue Bond Act or similar act in which a private person agrees:

(1) to arrange for the constructing and equipping of a facility for a state or local government by acting as agent for the government in procuring construction services, other services, tangible personal property which becomes an ingredient or component part of a construction project and other tangible personal property necessary for constructing and equipping the facility;

(2) to lease the completed facility from the government; and

(3) to buy the facility upon repayment of the bonds. The government agrees to own the facility, to finance the project in whole or in part through the issuance of bonds, to designate the private person as its agent in procuring the necessary property and services, to lease the facility to the private person and to sell the facility to the private person

upon repayment of the bonds.

B. Receipts from the sale of tangible personal property to the private person who is acting as agent for the government with respect to the bond project are deductible under Section 7-9-54 NMSA 1978 if the tangible personal property is not [an ingredient or component part of a construction project] construction material excluding tangible personal property whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered. To be deductible, [the cost of the bond project tangible personal property must meet all of the following criteria:

~~(1)~~ the cost of the bond project tangible personal property [does] must not increase the basis, as determined under the provisions of Section 1011 of the Internal Revenue Code in effect on the date the bond project commences, of the structure or other facility included in the definition of construction [and

~~(2)~~ the tangible personal property is: ~~(a)~~ not included in, or similar to, the list of structures and facilities specifically itemized in the definition of construction at Section 7-9-3 NMSA-1978; and

~~(b)~~ classified for depreciation purposes as 3-year property, 5-year property, 7-year property, 10-year property or 15-year property by Section 168 of the Internal Revenue Code in effect on the date the bond project commences or, if the Internal Revenue Code is amended to rename or replace these depreciation classes, would have been classified for depreciation purposes as 3-year property, 5-year property, 7-year property, 10-year property or 15-year property but for the amendment.]

C. A bond project commences when the governing

body of the state or local government takes official action to enter into the arrangement, but no earlier than the adoption of an inducement resolution.

~~D.~~ Receipts from the sale of tangible personal property which becomes an ingredient or component part of a construction project, whether the sale is to the private person acting as agent for the government or to the government itself, are not deductible under Section 7-9-54 NMSA 1978.]

D. This version of 3.2.212.22 NMAC applies to transactions occurring on or after March 2, 2018. [2/22/1995, 11/15/1996; 3.2.212.22 NMAC - Rn & A, 3 NMAC 2.54.22, 5/31/2001; A, xx/xx/2018]

3.2.212.24 CUSTOM SOFTWARE:

A. Because it is a service, receipts from developing or selling custom software for governmental entities are not deductible under Section 7-9-54 NMSA 1978.

B. Example 1: X contracts with the United States to develop software to test certain devices which the United States is considering purchasing. X is performing a service under this contract.

C. Example 2: Same facts as in Example 1 except that X is to modify an existing software test program. X is nonetheless performing a service under the contract.

D. Example 3: X enters into a qualifying research and development contract with a signatory agency of the United States. The contract is to develop software to test certain devices which the United States is considering purchasing. X is performing a service under this contract. To create the testing program X buys several pieces of packaged software and develops new programming to interconnect the packaged software into a coherent testing program. X may execute, and the vendors may accept in good faith, Type 15 [nttes] nontaxable transaction certificates or alternative evidence as

provided by Section 7-9-43 NMSA 1978 for the purchase of the packaged software.

[4/30/1997; 3.2.212.24 NMAC - Rn & A, 3 NMAC 2.54.24, 5/31/2001; A, xx/xx/2018]

3.2.218.9 SERVICES, LEASES, CONSTRUCTION SERVICES

A. Receipts from services performed for and from leases entered into with 501(c)(3) organizations are [fully taxable. Such receipts are] not deductible pursuant to Section 7-9-60 NMSA 1978. [Only receipts from selling tangible personal property to a 501(c)(3) organization are deductible.]

B. [Receipts] Except as provided in Paragraph C, receipts from [performing a construction project for] selling construction, including construction material to a 501(c)(3) organization, [including the construction services and the value of all property used in the construction project,] are receipts derived from performing a service and are [fully taxable.] not eligible for the deduction pursuant to Section 7-9-60 NMSA 1978.

C. Receipts from selling construction material that is tangible personal property, whether removable on non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, may be deducted from gross receipts when the sale is made to a 501(c)(3) organization.

[3/16/1979, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.218.9 NMAC - Rn, 3 NMAC 2.60.9 & A, 6/14/01; A, xx/xx/2018]

3.2.218.11 SALE OF MEALS:

Meals are tangible personal property. Therefore receipts from selling meals to a 501(c)(3) organization

are receipts from selling tangible personal property. Such receipts may be deducted from gross receipts under Section 7 9 60 NMSA 1978 if the organization delivers a properly executed Type 9 ~~[ntte with]~~ nontaxable transaction certificate or alternative evidence to the seller. Sales of meals directly to members of a 501(c)(3) organization may not be deducted under Section 7 9 60 NMSA 1978 even if the meals are served at a function of the organization. The 501(c)(3) organization is an entity distinct from its members. [10/29/1999; 3.2.218.11 NMAC - Rn, 3 NMAC 2.60.11 & A, 6/14/2001, xx/xx/2018]

3.2.218.13 - SALE OF GASES:

Gases, such as natural gas, nitrogen, carbon dioxide, helium, oxygen, propane, acetylene and nitrous oxide, are tangible personal property. Therefore receipts from selling gases to a 501(c)(3) organization may be deducted from gross receipts under Section 7 9 60 NMSA 1978 if the organization delivers a properly executed ~~[ntte]~~ nontaxable transaction certificate or alternative evidence to the seller. [3.2.218.13 NMAC - N, 3/15/2010; A, xx/xx/2018]

3.2.218.14 SINGLE MEMBER LIMITED LIABILITY COMPANY WHOSE SOLE MEMBER IS A 501(c)(3) ORGANIZATION:

A. A single member limited liability company (llc) whose sole member is a 501(c)(3) organization will be treated like a 501(c)(3) organization and receive the same treatment for purposes of Section 7-9-60 NMSA 1978 so long as the llc is recognized by the internal revenue service as a disregarded entity for federal income tax purposes.

B. Receipts from the sale of tangible personal property to an llc described in Subsection A above when the property is employed in the conduct of an unrelated trade or business as defined in Section 513 of the Internal Revenue Code of 1986, as amended or renumbered, are not

deductible pursuant to Subsection A of Section 7-9-60 NMSA 1978. If the llc, or its 501(c)(3) single member, delivering the ~~[ntte]~~ nontaxable transaction certificate or alternative evidence employs the tangible personal property in the conduct of an unrelated trade or business, the ~~[compensating tax is due.] llc, or its 501(c)(3) single member, is liable for the seller's gross receipts tax plus penalty and interest pursuant to Section 7-9-43 NMSA 1978.~~ [3.2.218.14 NMAC - N, 1/15/2015; A, xx/xx/2018]

End of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

<p style="text-align: center;">GENERAL SERVICES DEPARTMENT</p> <p>TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 5 PUBLIC PROPERTY PROCUREMENT AND MANAGEMENT PART 9 PUBLIC FACILITY NAMING</p> <p>1.5.9.1 ISSUING AGENCY: General Services Department (GSD) Facilities Management Division. [1.5.9.1 NMAC - N, 10/30/2018]</p> <p>1.5.9.2 SCOPE: All executive branch agencies with facilities under the control of the general services department. [1.5.9.2 NMAC - N, 10/30/2018]</p> <p>1.5.9.3 STATUTORY AUTHORITY: Section 15-3B-1, <i>et. seq.</i>, NMSA 1978 as amended. [1.5.9.3 NMAC - N, 10/30/2018]</p> <p>1.5.9.4 DURATION: Permanent. [1.5.9.4 NMAC - N, 10/30/2018]</p> <p>1.5.9.5 EFFECTIVE DATE: October 30, 2018 unless a later date is cited at the end of a section or paragraph. [1.5.9.5 NMAC - N, 10/30/2018]</p> <p>1.5.9.6 OBJECTIVE: The objective of this rule is to establish a fair, uniform, clear and effective process to develop a list of potential names for public facilities and for the removal of names from public facilities. [1.5.9.6 NMAC - N, 10/30/2018]</p>	<p>1.5.9.7 DEFINITIONS:</p> <p>A. “Department” means the general services department.</p> <p>B. “Division” means the facilities management division of the department.</p> <p>C. “Public facility” means a building or other real property under the control of the division.</p> <p>D. “Secretary” means the secretary of general services. [1.5.9.7 NMAC - N, 10/30/2018]</p> <p>1.5.9.8 LIST DEVELOPMENT: The secretary shall follow the below prescribed procedure for naming any public facility:</p> <p>A. The secretary shall announce the department’s intent to name a public facility on a publically available website.</p> <p>B. The announcement shall identify the public facility to be named, solicit proposed names from interested parties, allow at least 15 days for the submission of names, and specify the submission method.</p> <p>C. The secretary shall review the submitted names in consultation with the leadership of the agency or agencies that use the public facility and develop a list of name(s) to transmit to the governor for consideration.</p> <p>D. The secretary shall submit this list to the governor no more than 15 days after the expiration of the submission deadline in the announcement.</p> <p>E. If no proposed names are submitted to the department before the applicable deadline, the secretary may select a name and submit only this name to the governor. [1.5.9.8 NMAC - N, 10/30/2018]</p>	<p>1.5.9.9 FORMAL NAMING: The governor may select a name from the list submitted by the secretary in accordance with statute and issue a proclamation formally naming the public facility. The governor may choose not to name the public facility or may choose to request another list of names. [1.5.9.9 NMAC - N, 10/30/2018]</p> <p>1.5.9.10 REMOVAL OF NAME: A public facility shall not be named for a public officer or other person who has been convicted of a felony. The division shall remove the name from a public facility named for such person immediately upon conviction, whether or not another name has been offered or approved for substitution and renaming. The division shall remove the name within 10 days of the conviction and notify the occupying agencies of the removal. [1.5.9.10 NMAC - N, 10/30/2018]</p> <hr/> <p style="text-align: center;">HEALTH, DEPARTMENT OF</p> <p>TITLE 7 HEALTH CHAPTER 5 VACCINES AND IMMUNIZATIONS PART 5 NEW MEXICO STATEWIDE IMMUNIZATION REGISTRY</p> <p>7.5.5.1 ISSUING AGENCY: Public Health Division, Department of Health. [7.5.5.1 NMAC - N, 10/30/2018]</p> <p>7.5.5.2 SCOPE: These regulations govern the use of the New Mexico statewide immunization registry, a computerized repository of immunization information maintained by the New Mexico department of health. [7.5.5.2 NMAC - N, 10/30/2018]</p>
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7.5.5.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the secretary of the department of health pursuant to the authority granted under Subsection E of Section 9-7-6 NMSA 1978, Sections 24-5-7 through 24-5-15 NMSA 1978, Subsection R of Section 24-1-3 NMSA 1978, and Section 24-1-21 NMSA.
[7.5.5.3 NMAC - N, 10/30/2018]

7.5.5.4 DURATION: Permanent.
[7.5.5.4 NMAC - N, 10/30/2018]

7.5.5.5 EFFECTIVE DATE: October 30, 2018, unless a later date is cited at the end of a section.
[7.5.5.5 NMAC - N, 10/30/2018]

7.5.5.6 OBJECTIVE: The objective of this rule is to describe implementation and maintenance, submission, reporting, participation, and limits on access to the registry portion of the New Mexico immunization program.
[7.5.5.6 NMAC - N, 10/30/2018]

7.5.5.7 DEFINITIONS:

A. "Authorized user" means a person to whom the division has provided account credentials authorizing that person to access to the registry.

B. "CDC" means centers for disease control and prevention, the federal agency responsible for monitoring and protecting the United States of America from health, safety, and security threats related to diseases.

C. "Data elements" means the information required to be entered into the registry by providers as specified in these regulations or by official division publication.

D. "Department" means the department of health.

E. "Division" means the department of health, public health division.

F. "Government issued identification" means a legible, current credentialing

document issued by a local, state or federal government entity that includes a photo.

G. "Health information exchange" means an arrangement that allows the sharing of health care information about individual patients among different health care institutions or unaffiliated providers.

H. "Immunization" means treatment of an individual with either a vaccine licensed by the U.S. food and drug administration for immunization and distribution in the United States, or an immune globulin product licensed by the U.S. food and drug administration and used for the purposes of producing or enhancing an immune response.

I. "NDC" means National Drug Code.

J. "NMDOH" means the New Mexico department of health.

K. "NMSIIS" means the New Mexico statewide immunization information system.

L. "Provider" means an individual or organization required to submit information to the registry pursuant to Section 24-5-8 NMSA 1978 including physicians, nurses, pharmacists, nurse practitioners, physician's assistants and other health care providers authorized by the division.

M. "Patient" means any person offered an immunization.

N. "Registry" means the New Mexico statewide immunization information system (NMSIIS), a computerized repository of immunization information maintained by the New Mexico department of health.

O. "Vaccines for children program" or "VFC" means the program operated by the division that provides federally funded vaccines to children ages 0-18 years who are uninsured, on medicaid, or are Alaska Native/American Indian.
[7.5.5.7 NMAC - N, 10/30/2018]

7.5.5.8 IMPLEMENTATION AND MAINTENANCE OF THE

REGISTRY: The department is responsible for establishing guidelines as necessary regarding the implementation and maintenance of the registry.

7.5.5.9 REPORTING REQUIREMENTS:

A. Providers shall report all data elements to the registry for all immunizations they administer to a patient unless the patient or the patient's parent or guardian informs the provider that the patient declines to participate in the registry or does not wish to include a particular immunization in the registry.

B. Providers shall report all data elements to the registry within 10 days of administering an immunization. A provider may request an extension of 20 days from the division for large immunization events. Permission for extensions for these events are at the discretion of the division and providers must obtain pre-approval.

C. The following are the minimum data elements that must be reported to the registry:

- (1)** Vaccination information, including:
- (a)** name of vaccine;
 - (b)** manufacturer of vaccine;
 - (c)** lot/serial number of vaccine;
 - (d)** funding source of vaccine;
 - (e)** expiration date of vaccine;
 - (f)** NDC number of vaccine;
 - (g)** date of administration of vaccine;
 - (h)** dosage administered to patient;
 - (i)** body site and route of administration.
- (2)** Patient demographic information, including:
- (a)** last name;
 - (b)** first name;
 - (c)** middle name, if applicable;

sex; (d)
 date of birth; (e)
 insurance status; (f)
 insurance information; (g)
 mailing address; (h)
 physical address; (i)
 contact information. (j)

D. Providers will be notified through an official memo by the division of any additional required data elements for reporting not already included herein. Any included data elements published through an official memo to providers are incorporated herein by reference as required data elements. [7.5.5.9 NMAC - N, 10/30/2018]

7.5.5.10 SUBMISSION OF REPORTS OF IMMUNIZATION TO THE REGISTRY:

A. All data elements shall be reported to the registry in a manner and format approved by the division.

B. Direct reporting:
(1) Authorized users may directly review and submit data elements electronically through the registry website interface using individual account credentials assigned by the division.

(2) Each user may only use their individual account credentials assigned to the authorized user.

(3) Authorized user account credentials may not be shared.

C. Data exchange reporting:

(1) Providers with electronic systems that are compatible with the division's data exchange program may request to receive approval to utilize the compatible system for reporting the required data elements.

(2) Providers using data exchange reporting must utilize the file format approved by the

division and are responsible for all associated costs.
(3) Providers using data exchange reporting must update their systems to maintain compatibility with the divisions data exchange program as necessary to maintain the integrity of the data transfers.

D. A health information exchange may exchange information with the registry on behalf of a provider. When a health information exchange operates in this manner, the exchange is subject to the same rules as the provider.

E. To decrease duplication of patient records and duplicate vaccines, the division may utilize other information sources to populate the registry and perform data quality activities, such as birth certificates, adoption decrees, paper shot records, or medicaid enrollment information. [7.5.5.10 NMAC - N, 10/30/2018]

7.5.5.11 PROCEDURES TO DECLINE PARTICIPATION

A. At the time an immunization is offered or administered, if a patient, or a minor's parent or legal guardian notifies the provider that s/he chooses to decline participation in the registry or does not wish to have a specific immunization recorded in the registry, the provider shall document the patient's decision to opt-out as follows:

(1) The provider shall document the patient's opt-out decision using a form provided by the division, or the provider's own form provided the same information as the division's form is included.

(2) The provider will store all opt-out documentation in an accessible, orderly system so that in the event of a public health emergency, the department can review the opt-out data to inform emergency responses.

B. Patients must complete the opt-out process with each healthcare provider that offers immunization services to the

patient, each time immunization services are provided. If the patient declines participation for certain immunizations only, the patient must complete the opt-out process for each immunization for which the patient opts out.

[7.5.5.11 NMAC - N, 10/30/2018]

7.5.5.12 PROCEDURES FOR REVIEWING AND CORRECTING PATIENT RECORDS:

A. At the time an immunization is offered, the provider shall notify the patient of the procedures to review and correct information contained in the registry.

B. A patient, or a minor patient's parent or guardian, who wishes to review the patient's registry immunization record may request a copy from the patient's provider or from a department public health office, or through a department-approved online portal.

C. If a patient requests to correct any information in the registry, the patient shall submit a written request to the division, the NMDOH Helpdesk, to a department public health office, or to the patient's provider. The request shall identify the patient and the information to be corrected.

D. All requests for corrections must be accompanied by a copy of patient identification. If a patient is a minor, the request must be accompanied by a certified copy of the patient's birth certificate and a copy of identification for the submitter or the parent/guardian of the requesting patient. If the requester is a non-parent legal guardian, the guardian must also submit a copy of the guardian's legal appointment of guardianship.

E. If a patient requests to change the registry's record of the patient's date of birth, the patient must present a birth certificate or other legal documentation to verify the patient's correct date of birth. All such requests must be submitted to division staff via the NMDOH Helpdesk. Information on how to contact the NMDOH Helpdesk can

be found on the NMSIIS webpage https://nmsiis.health.state.nm.us/webbiznet_nm/Login.aspx.

F. If the department bureau of vital records and health statistics provided the date of birth for a patient, the patient's date of birth may not be changed except through notification by vital records or a court order.

G. Only division staff are permitted to change a patient's name or date of birth on a patient record.

(1)

Appropriate documentation as required by this section must be presented to division staff to have the patient's name changed, or spelling corrected or changed.

(2)

If a court order for adoption requires a name change, the request for change must be submitted to division staff via the NMDOH helpdesk and must include copies of the patient's legal documentation supporting the request.

H. If a patient requests to change any other information in the registry, supporting materials such as medical records, should be attached to the patient's written request.

I. The division may make a change if the change is supported by appropriate documentation.

J. If the patient cannot be uniquely identified in the registry, or if the request is insufficiently supported, the division will contact the patient to obtain additional information.

K. Upon making a determination, the division will notify the requestor of that decision. If the request is denied, the division will notify the patient of the reason(s) for denial. If the request is approved, the division will record the change in the registry.

[7.5.5.12 NMAC - N, 10/30/2018]

7.5.5.13 PROCEDURES TO WITHDRAW CONSENT AND REMOVE INFORMATION FROM REGISTRY:

A. To remove a record from NMSIIS, a patient must

submit by mail or hand delivery to the department a completed decision to remove NMSIIS record form.

The decision to remove form can be obtained from a provider or printed from the department website at <https://nmhealth.org/about/phd/idb/imp/siis/>.

B. The patient's request to remove information must be accompanied by a copy of patient identification. If the patient is a minor, the request must be accompanied by a copy of the patient's birth certificate and a copy of identification for the submitter or parent/guardian of the patient. If the requester is a guardian, a copy of the legal appointment of guardianship will be required.

C. Upon receipt of the request, or upon receipt of any requested additional information, the division shall delete the patient's record from the registry. The division shall notify the patient when the record is deleted.

[7.5.5.12 NMAC - N, 10/30/2018]

7.5.5.14 LIMITS ON ACCESS TO THE REGISTRY:

A. Access to the information in the registry shall be limited to primary care physicians, nurses, pharmacists, managed care organizations, school nurses, and other appropriate health care providers including nurse practitioners and physician assistants, or public health entities as designated by the secretary of health. A managed care organization may only access information for its enrollees.

B. Requests for access to the registry shall be made by a provider in writing to the division and access shall be determined by the division.

C. No person or automated system may access or attempt to access the registry without approval from the division.

D. At the division's discretion, access may be modified.

E. A patient, or a patient's parent or guardian if the patient is under the age of 18, may access the patient's records.

[7.5.5.13 NMAC - N, 10/30/2018]

7.5.5.15 COMPLAINT INVESTIGATIONS:

A. If the division receives a complaint or otherwise learns of noncompliance of a provider relating to these rules, an investigation will be initiated.

B. Upon completion of the investigation, the division will issue an investigative report substantiating or not substantiating the alleged noncompliance.

[7.5.5.14 NMAC - N, 10/30/2018]

7.5.5.16 SANCTIONS AND NONCOMPLIANCE:

A. A provider is in noncompliance if they fail to follow any of these regulations.

B. If noncompliance is substantiated, the department will issue the provider a written report of deficiencies which shall include a plan of correction.

(1) The provider must correct any deficiencies identified in the department's plan of correction within a fixed period of time.

(2) The period of time for a provider to correct deficiencies will be reasonably determined by the division and be based on the circumstances of the noncompliance. The time period will be specified in the plan of correction.

C. Upon expiration of the correction date as stated in the plan of correction, pursuant to Section 24-1-21 NMSA the division may impose a separate civil monetary penalty of one hundred dollars (\$100) for each repeated instance of noncompliance, including, but not limited to each invalid or improper entry. The division shall issue a written report detailing the repeated non-compliance and the civil monetary penalty. The civil monetary penalty shall not exceed five thousand dollars (\$5,000) per report.

[7.5.5.15 NMAC - N, 10/30/2018]

7.5.5.17 ADMINISTRATIVE REVIEW:

A. If a provider wishes to appeal the issuance of a

civil monetary penalty, the provider must submit a written request for an administrative review within 10 working days from the date of issuance of the civil monetary penalty.

B. An administrative review will be conducted by an assigned division bureau chief or designee within 30 days of the request for review. Additional time to conduct the administrative review may be granted if requested by the provider and good cause is shown.

(1) The provider may request a paper administrative review, limited to records and a written appeal, or may appear in person or through an advocate of the provider's choice and present evidence to refute the results of the investigation and the reason for the issuance of the civil monetary penalty during an administrative review.

(2) The assigned bureau chief or designee will complete their review and either overturn, modify, or uphold the civil monetary penalty in a written decision within 10 days of the completion of the administrative review.
[7.5.5.16 NMAC - N, 10/30/2018]

7.5.5.18 ADMINISTRATIVE HEARING:

A. If the provider wishes to appeal the result of the administrative review, the provider must submit a written request to the division within 10 working days from the date of issuance of the assigned bureau chief or designee's written decision.

B. Hearing process:

(1) Hearing will be conducted by a hearing officer appointed by the secretary.

(2) Hearings shall be conducted in Santa Fe, New Mexico, unless the appellant can show significant hardship sufficient to require the case be held in a different location.

(3) Due to federal and state laws regarding the confidentiality of protected health information, all hearings held pursuant to this section shall be closed

to the public.

(4) The hearing shall be recorded on audio recording equipment. The hearing officer shall maintain the recording. No other recordings may be made except with the permission of the hearing officer.

(5) Any hearing provided for in this rule may be held telephonically, with the consent of the parties.

(6) A request for a telephonic hearing must be made no later than 10 business days prior to the date of the hearing; notice of the telephonic hearing shall be given to all parties and shall include all necessary telephone numbers;

(6) The department shall schedule and hold the hearing no later than 60 calendar days from the date the department receives the appellant's request for hearing. The hearing officer may extend the 60-day time period for good cause shown, or the parties may extend that period by mutual agreement.

(7) The department shall issue notice of the hearing at least fifteen days prior to the scheduled date of the hearing. The notice shall include a statement of the time, place, and nature of the hearing.

(9) An appellant's failure to appear at the hearing at the date and time noticed shall constitute a default unless good cause for the failure to appear is shown.

(10) All parties shall be given the opportunity to respond and present evidence and argument on relevant issues.

(11) A party may be represented by a person licensed to practice law in New Mexico or a non-lawyer representative or may represent himself or herself.

(12) The hearing officer shall create a record of the proceedings which shall include the following:

(a) all pleadings, motions, and rulings;

(b) evidence and briefs received or considered;

(c) a statement of any matters officially noticed;

(d) offers of proof, objections, and rulings thereon;

(e) proposed findings and conclusions; and

(f) any action recommended by the hearing officer.

(13) Unless the hearing officer determines a different procedure is appropriate, the hearing officer shall conduct the hearing as follows:

(a) opening statements by the appellant and the department;

(b) upon conclusion of the opening statements, the department shall present its case;

(c) upon conclusion of the departments case, the appellant may present his or her case;

(d) upon conclusion of either party's case, the opposing party may present rebuttal evidence; and

(e) after presentation of the evidence by the parties, the parties may present closing arguments.

(14) The rules of evidence as applied in courts do not apply in the proceedings; any relevant evidence shall be admitted; irrelevant, immaterial, or unduly repetitious evidence may be excluded.

(15) The department shall be required to prove its case by a preponderance of the evidence.

(16) The parties may submit briefs including findings of fact and conclusions of law for consideration by the hearing officer. All briefs must be submitted 15 days after the conclusion of the hearing.

(17) No later than 30 calendar days after the last submission by a party, the hearing

officer shall prepare and submit to the secretary a written recommendation of action to be taken by the secretary; the recommendation shall propose sustaining, reversing, or modifying the proposed action of the department.

(18) The secretary shall issue a final written decision accepting or rejecting the hearing officer's recommendation in whole or in part no later than 30 calendar days after receipt of the hearing examiner's recommendation; the final decision shall identify final action taken. Service of the secretary's final decision shall be made upon the appellant by registered or certified mail.

History of 7.5.5 NMAC:
[RESERVED]

HEALTH, DEPARTMENT OF

**TITLE 7 HEALTH
CHAPTER 30 FAMILY AND CHILDREN HEALTH CARE SERVICES
PART 13 CRISIS TRIAGE CENTERS**

7.30.13.1 ISSUING
AGENCY: New Mexico Department of Health (DOH), Division of Health Improvement (DHI).
[7.30.13.1 NMAC - N, 10/30/2018]

7.30.13.2 SCOPE: These regulations apply to public, profit and not for profit crisis triage centers providing the services specified in these regulations. Any crisis triage center providing services specified in these regulations must be licensed under these regulations.
[7.30.13.2 NMAC - N, 10/30/2018]

7.30.13.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated by the secretary of the New Mexico department of health, pursuant to the general authority granted under Subsection E of Section 9-7-6, NMSA 1978; and the authority granted under Subsection D of Section 24-1-2,

Subsection I of Section 24-1-3 and Section 24-1-5 NMSA 1978.
[7.30.13.3 NMAC - N, 10/30/2018]

7.30.13.4 DURATION:
Permanent.
[7.30.13.4 NMAC - N, 10/30/2018]

7.30.13.5 EFFECTIVE DATE: October 30, 2018, unless a later date is cited at the end of a section.
[7.30.13.5 NMAC - N, 10/30/2018]

7.30.13.6 OBJECTIVE:

A. To establish minimum standards for licensing crisis triage centers that provide quality crisis stabilization services outside of a hospital setting.

B. To ensure the provision of quality services which maintain or improve the health and quality of life to the clients.

C. To monitor compliance under these regulations through surveys and to identify any facility areas which could be dangerous or harmful.
[7.30.13.6 NMAC - N, 10/30/2018]

7.30.13.7 DEFINITIONS:

A. "Administrator" means the person who is delegated the administrative responsibility for interpreting, implementing, and applying policies and procedures at the crisis triage center. The administrator is responsible for establishing and maintaining safe and effective management, control and operation of the CTC and all of the services provided at the CTC including fiscal management. The administrator must meet the minimum administrator qualifications in these regulations.

B. "Advanced practice registered nurse" means a registered nurse that includes a certified nurse practitioner, or a clinical nurse specialist as defined and licensed under the Nursing Practice Act, as amended, and related regulations, and is currently in good standing.

C. "Applicant" means the individual or legal entity

that applies for a CTC license to provide services in a particular facility. If the applicant is a legal entity, the individual signing the license application on behalf of the legal entity must have written legal authority from the legal entity to act on its behalf and execute the application. The license applicant must be the legal owner of the entity providing services, but not necessarily the facility.

D. "Basic life support" (BLS) means training and current certification in adult cardiopulmonary resuscitation equivalent to American heart association class C basic life support and in emergency treatment of a victim of cardiac or respiratory arrest through cardiopulmonary resuscitation and emergency cardiac care.

E. "Caregivers criminal history screen" means pursuant to the criminal history screening for Caregivers Act, Section 29-17-1 through Section 29-17-5 NMSA 1978, the process for health facilities and medicaid home and community-based waiver providers to complete a caregiver criminal history screening for all caregivers no later than 20 calendar days after the employment hire date. The screening or background check includes the submission of fingerprints required for obtaining state and federal criminal history used to conduct the fitness determination. The caregiver's criminal history screening program receives and processes background check applications for criminal history screenings from care providers in the state of New Mexico. Caregivers may be prohibited from employment if the caregiver has a disqualifying condition.

F. "Chemical restraint" means a drug or medication when it is used as a restriction to manage a client's behavior or restrict a client's freedom of movement and is not a standard treatment or dosage for a client's condition. If a drug or medication is used as a standard treatment to address the assessed current

symptoms and needs of a client with a particular medical or psychiatric condition, its use is not considered a chemical restraint.

G. “CLIA” means clinical laboratory improvement amendments of 1988 as amended.

H. “Client” means any person who receives care at a crisis triage center.

I. “Compliance” means the CTC’s adherence to these regulations, as well as all other applicable state and federal statutes and regulations. Compliance violations may result in sanctions, civil monetary penalties and revocation or suspension of the CTC license.

J. “Crisis stabilization services” means behavioral health services that are provided to help the client return his baseline level of functioning before the crisis.

K. “CYFD” means the New Mexico children youth and families department.

L. “CYFD criminal records and background checks” means pursuant to the Criminal Offender Employment Act, Section 28-2-1 to Section 28-2-6 NMSA 1978, the New Mexico Children’s and Juvenile Facility Criminal Records Screening Act, Section 32A-15-1 to Section 32A-15-4 NMSA 1978, amended, and Section 8.8.3 NMAC, the process of conducting a nationwide criminal history records check, background check and employment history verification on all operators, staff and employees and prospective operators, staff and employees of treatment facilities and programs with the objective of protecting children/youth and promoting the children’s/youth’s safety and welfare while receiving service from the facilities and programs. The process shall include submission of electronic fingerprints for those individuals to the department of public safety and the federal bureau of investigation for the purpose of conducting a criminal history and background check; identification of

information in applicants’ background bearing on whether they are eligible to provide services; a screening of CYFD’s information databases in New Mexico and in each state where the applicant resided during the preceding five years; and any other reasonably reliable information about an applicant in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply.

M. “Deficiency” means a violation of or failure to comply with any provision(s) of these regulations.

N. “Department” means the New Mexico department of health.

O. “Employee” means any person who works at the CTC and is a direct hire of the owner entity or management company, if applicable.

P. “Facility” means the physical premises, building(s) and equipment where the crisis triage center services are provided, whether owned or leased and which is licensed pursuant to these regulations.

Q. “High risk behavior” means behaviors that place clients, staff or visitors’ physical and mental health and safety at risk.

R. “HSD” means the NM human services department.

S. “Incident” means any known, alleged or suspected event of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

T. “Incident management system” means the written policies and procedures adopted or developed by the CTC for reporting abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

U. “Incident report form” means the reporting format issued by the department for the reporting of incidents or complaints.

V. “Level III.7-D: Medically Monitored Inpatient Detoxification” means the types of detoxification services described by American Society of Addiction Medicine (ASAM) in its *Patient*

Placement Criteria, Second Edition, Revised (PPC-2R) Level III &-D includes 24-hour medically supervised detoxification services requiring 24-hour nursing care and physician visits as necessary, unlikely to complete detox, without medical, nursing monitoring and more intensive detoxification services.

W. “Licensee” means the person(s) or legal entity that operates the CTC and in whose name the CTC license has been issued and who is legally responsible for compliance with these regulations.

X. “Licensing authority” means the New Mexico department of health.

Y. “Licensed mental health professional” means a psychologist, social worker, physician, psychiatrist, physician assistant, registered nurse, practical nurse, advanced practice registered nurse, each shall have behavioral health training and shall be licensed in the state of New Mexico.

Z. “Management company” means the legal entity that manages the CTC program, if different from the legal owner of the facility.

AA. “NFPA” means the national fire protection association which sets codes and standards for fire and life safety. NFPA 101 and related standards, current edition as required by the department.

BB. “NMSA” means the New Mexico Statutes Annotated 1978 compilation and all subsequent amendments, revisions and compilations.

CC. “Outpatient services” means immediate crisis stabilization services provided to clients who are not admitted to the residential setting. Outpatient crisis stabilization services are not ongoing behavioral health treatment services.

DD. “Physical restraint” means the use of physical force, consistent with State and Federal laws and regulations, without the use of any device or material that restricts the free movement of all or a portion of a body, but does not include: briefly holding a client in

order to calm or comfort the client; holding a client's hand or arm to escort the client safely from one area to another; or intervening in a physical fight.

EE. "Physician" means a licensed individual, currently in good standing, authorized to practice medicine as defined and licensed under the New Mexico Medical Practice Act, Section 61-6-1 to Section 61-6-34 NMSA 1978, as amended, and related regulations or osteopathic medicine as defined and licensed under Section 61-10-1 to Section 61-10-22 NMSA 1978, as amended, and related regulations.

FF. "Physician's assistant" means an individual, currently in good standing, who is licensed and authorized to provide services to patients under the supervision and direction of a licensed physician under the Physician Assistant Act, Section 61-6-7 to Section 61-6-10 NMSA 1978, as amended and related regulations, or is authorized and licensed to provide services to patients under the supervision and direction of a licensed osteopathic physician under the Osteopathic Physicians' Assistants Act, Section 61-10A-1 to Section 61-10-7 NMSA 1978 as amended, and related regulations.

GG. "Plan of correction" (POC) means the plan submitted by the licensee or its representative(s) addressing how and when deficiencies identified through a survey or investigation will be corrected. A plan of correction is a public record once it has been approved by the regulatory authority and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a CTC license, including to prove licensee compliance violations or failures.

HH. "Policy" means a written statement that guides and determines present and future CTC decisions and actions.

II. "Premises" means all of the CTC including buildings, grounds and equipment.

JJ. "Primary source verification" means the act of obtaining credentials directly from the original or primary source(s).

KK. "Procedure" means the action(s) that must be taken in order to implement a written policy.

LL. "Quality assurance" means the CTC's on-going comprehensive self-assessment of compliance with these regulations and other applicable statutes and regulations.

MM. "Quality committee" means a committee comprised at a minimum of the administrator, clinical director, director of nursing, licensed mental health professional, and psychiatrist. Other committee members may be specified by rules governing payor requirements. The committee shall establish and implement quality assurance and quality improvement systems that monitor and promote quality care to clients.

NN. "Quality improvement system" means systematic and continuous actions that lead to measurable improvement in services and focus on reduction and stabilization of crises for clients.

OO. "Registered nurse" means an individual, currently in good standing, who is licensed and authorized to provide nursing services under the Nursing Practice Act, Section 61-3-1 to Section 61-3-30 NMSA 1978, as amended, and related regulations.

PP. "Residential services" means any crisis stabilization services provided to a client admitted to the residential setting.

QQ. "Restraint clinician" means a New Mexico licensed medical doctor, doctor of osteopathy, advanced practice registered nurse, clinical nurse specialist, physician assistant or doctoral level psychologist (Psy.D., Ph.D., or E.D.), who is trained in the use of emergency safety interventions.

RR. "Sanitize clothes" means the use of water at a temperature of 212 degrees or use of a disinfectant agent to wash clothes.

SS. "Scope of practice" means the procedures, actions, and processes that a healthcare practitioner is permitted to undertake under the terms of their professional license. The scope of practice is limited to that which the applicable law allows for specific education, training, experience and demonstrated competency.

TT. "Seclusion" means the involuntary confinement of a client alone in a room where the client is physically prevented from leaving.

UU. "Short-term residential stay" means the limit of a client's stay is eight days for the residential setting.

VV. "Staff" means any person who works at the CTC, and includes employees, contracted persons, independent contractors and volunteers who perform work or provide goods and services at the CTC.

WW. "U/L approved" means approved for safety by the national underwriter's laboratory.

XX. "Violation" means all actions or procedures by the CTC or licensee that are not in compliance with these regulations and all other applicable state and federal statutes and regulations.

YY. "Variance" means a written decision, made at the licensing authority's sole discretion, to allow a CTC to deviate from a portion(s) or a provision(s) of these regulations for a period that expires upon remodel of the CTC or change of ownership, providing the variance does not jeopardize the health, safety or welfare of the CTC's clients, visitors and staff and is not in violation of other applicable state and federal statutes and regulations. A variance can be renewed upon approval of the licensing authority. A variance may be revoked at the discretion of the licensing authority due to changes in state or federal regulations and statutes, or change of circumstances that may jeopardize the health, safety or welfare of clients.

ZZ. "Waiver" means a written decision, made at the licensing authority's sole discretion, to allow a

CTC to deviate from a portion(s) or a provision(s) of these regulations for a limited and specified time period not to exceed the duration of the license, providing the waiver does not jeopardize the health, safety or welfare of the CTC's clients, visitors and staff and is not in violation of other applicable state and federal statutes and regulations. A waiver can be renewed on an annual basis upon approval of the licensing authority. A waiver may be revoked at the discretion of the licensing authority due to changes in state or federal regulations, or change of circumstances that may jeopardize the health, safety or welfare of clients.

AAA. "Withdrawal management" means the immediate psychological stabilization, diagnosis and treatment of a client who is intoxicated, incapacitated, or experiencing withdrawal of alcohol or drugs.

BBB. "Youth" means residents 14 years of age and older up to age 18.

CCC. "Youth Staff" means a person who has contact with youth in a licensed facility and includes the owner, operator or director of a program, volunteers, full-time, part-time, and contract employees.

[7.30.13.7 NMAC - N, 10/30/2018]

7.30.13.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words "shall" or "must" or "may". "Shall" or "must" means mandatory compliance. "May" means permissive compliance. The words "adequate", "proper", and other similar words mean the degree of compliance that is generally accepted throughout the professional field by those who provide services to the public in facilities.

[7.30.13.8 NMAC - N, 10/30/2018]

7.30.13.9 SCOPE OF SERVICES:

A. General scope of services: These regulations apply to crisis triage centers (CTC) which

are health facilities offering youth and adult outpatient and residential care services. A CTC provides stabilization of behavioral health crises as outpatient stabilization or short-term residential stabilization in a residential rather than institutional setting, which may provide an alternative to hospitalization or incarceration. The CTC services may vary in array of services offered to meet the specific needs of different communities in New Mexico. A CTC may provide limited detoxification services but is differentiated from a detoxification center in that it does treat individuals who require treatment beyond Level III.7-D: Medically Monitored Inpatient Detoxification. The CTC provides emergency behavioral health triage and evaluation, and on a voluntary basis. The CTC may serve individuals 14 years of age or older who meet admission criteria. The CTC shall offer services to manage individuals at high risk of suicide or intentional self-harm. The CTC shall not refuse service to any individual who meets criteria for services.

B. Type of services:

(1) a CTC structured for less than 24-hour stays providing only outpatient withdrawal management or other stabilization services;

(2) a CTC providing outpatient and residential crisis stabilization services; and

(3) a CTC providing residential crisis stabilization services.

C. Limitations on scope of services:

(1) the CTC shall not accept involuntary commitments or individuals who are not voluntarily seeking treatment;

(2) the CTC shall not provide detoxification services beyond Level III.7-D: Medically Monitored Inpatient Detoxification services;

(3) the CTC shall not provide medical care not related to crisis triage intervention services beyond basic medical care of first aid and CPR;

(4) the CTC shall not provide residential services in excess of 14 calendar days;

(5) the CTC shall not provide ongoing outpatient behavioral health treatment;

(6) the CTC shall not exceed the capacity for which the CTC is licensed;

(7) a CTC with both adult and youth occupants must locate youth rooms and restrooms in a unit or wing that is physically separated from the adult facilities;

(8) A CTC shall not administer emergency psychotropic medications as described in Subsection M of 43-1-15 NMSA 1978.

D. License required:

(1) a CTC shall not be operated without a license issued by the department;

(2) any facility providing the services described in these regulations on the effective date of these regulations, shall apply for a CTC license within 180 days;

(3) a CTC licensed under these regulations shall not assert, represent, offer, provide or imply that the CTC is or may render care or services other than the services it is permitted to render under these regulations and within the scope of all applicable professional license(s);

(4) if an unlicensed CTC is found to be providing services for which a license is required under these regulations, the secretary may issue a cease-and-desist order, to protect human health or safety or welfare. The unlicensed facility may request a hearing that shall be held in the manner provided under these regulations and all other applicable regulations.

[7.30.13.9 NMAC - N, 10/30/2018]

7.30.13.10 INITIAL LICENSE PROCEDURES: These regulations should be thoroughly understood and used by the applicant, when applying for the initial CTC license. The applicant for an initial CTC license under these regulations must follow these procedures when applying for a license.

A. Notification and

letter of intent: The owner shall advise the licensing authority of its intent to open a crisis triage center pursuant to these regulations by submitting a letter of intent. The letter of intent must be on the applicant's letterhead and signed by a person with authority to make legal decisions for the owner and the CTC and at a minimum, include the following:

- (1) the name of CTC;
- (2) the name of the legal owner and licensee and the type of legal entity under which the CTC shall be owned;
- (3) the name of the management company, if any;
- (4) the type of facility license requested;
- (5) the name and resume of the proposed administrator;
- (6) the anticipated number of residential and non-residential clients to be served;
- (7) the intended population and age range of the clients to be served;
- (8) the number of residential beds in the proposed CTC;
- (9) the physical address of CTC including building name or suite number;
- (10) the mailing address, if different from physical address;
- (11) the applicant's contact name(s), address, e-mail address, and telephone number(s);
- (12) the anticipated payers and sources of reimbursement; and
- (13) a list of all services to be provided at the CTC location which is requesting the license.

B. License

application and fees: After review by the department of the letter of intent for general compliance with these regulations and verification that an application is appropriate under these regulations, the owner shall

be required to complete a license application on a form provided by the department. Prior to any construction, renovation or addition to an existing building and after review and approval of the letter of intent by the department, the applicant must submit to the licensing authority an application form provided by the department, fully completed, printed or typed, dated, signed, and notarized accompanied by the required fee. If electronic filing of license applications is available at the time of application, the applicant will be required to follow all electronic filing requirements, and may forgo any notary requirements, if specifically allowed under the applicable electronic filing statutes, regulations and requirements. The licensing authority will provide current fee schedules. The department reserves the right to require additional documentation to verify the identity of the applicant in order to verify whether any federal or state exclusions may apply to the applicant. Fees must be paid in the form of a certified check, money order, personal, or business check, or electronic transfer (if available), made payable to the state of New Mexico, and are non-refundable. The applicant must also attach to the application and submit to the department, a set of building plans which includes all of the information required by these rules, accompanied by proof of zoning approvals by the applicable building authority.

C. Building plans:

The CTC building plans must be of professional quality, prepared and stamped by an Architect licensed by the state of New Mexico pursuant to Subsection B of Section 61-15-9 NMSA 1978. One copy of the building plans must be submitted, printed on substantial paper measuring at least 24 inches by 36 inches and drawn to an accurate scale of at least one-eighth inch to 1 foot. The building plans for renovated or building additions to an existing building must include sufficient information to clearly distinguish between new and existing construction, for the department to

make a compliance determination. The following plans are the minimum required for all facilities in new and / or renovated construction:

(1) Site plan:

showing the location of the building on a site/plot plan to determine surrounding conditions, driveways, all walks and steps, ramps, parking areas, handicapped and emergency vehicle spaces, accessible route to the main entrance, secure yard for clients, any permanent structures, including notes on construction materials used.

(2) Life

safety and code compliance plan: noting applicable code requirements and compliance data, locations of rated fire walls, smoke partitions (if any), exit paths & distances, fire extinguishers locations.

(3) Floor

plans: showing location use of each room, (e.g., waiting room, examination room, office, client (resident) rooms, kitchen, common elements, door locations (swings), window locations, restrooms, locations of all restrooms, plumbing fixtures (sinks, toilets, tubs-showers; location a of all level changes within and outside the building (e.g. steps or ramps, etc.); and all other pertinent explanatory information addressing the requirements in applicable regulations.

(4)

Dimensioned floor plan: showing all exterior and interior dimensions of all rooms, spaces, and corridors, etc.

(5) Exterior

building elevations: noting all building heights, locations of exterior doors, and any operable and fixed windows (sill heights).

(6) Building

and wall sections: showing at least one building or wall section showing an exterior and interior wall construction section including the material composition of the floor, walls, and ceiling/roof construction.

(7) Schedule

sheets: room finish: noting all room finishes, (e.g., carpet, tile, gypsum board with paint, etc); door schedule; noting door sizes/thickness, door types & ratings; window schedule,

noting sizes, type and operation; skylight schedule, noting size, type.

(8) Special

systems plan: location of fire extinguishers, heat and smoke detectors, nurse call systems, and operational elements of alarm system.

(9)

Mechanical plans: noting location of heating units, furnaces, hot water heaters, and fuel type and source; all heating, ventilating and air conditioning/cooling systems including locations of fire dampers.

(10) Plumbing

plan: noting all plumbing fixture locations, fixture types.

(11) Electrical

plan: noting power and lighting layouts, exit lighting, emergency lighting fixtures, emergency power systems (if any), electrical panel information.

(12) Other

plans: As necessary (ie; phasing plan) to describe compliance with the other requirements in applicable regulations.

D. New construction:

Building plans must be submitted, and will be reviewed by the department for compliance with these licensing regulations, and applicable building and fire safety codes. If the department approves the CTC's building plans and local building officials have issued a construction permit, construction may begin. This provision is an ongoing requirement and applies to, and includes all construction at the CTC, which occurs before and after issuance of the initial license. This provision does not generally apply to maintenance and repair. However, if the maintenance or repair impacts or alters any of the CTC requirements under these regulations, the applicant or licensee must notify the department and verify ongoing compliance with these regulations. The department shall not be liable for any costs or damages incurred by the applicant relating to construction in the event the applicant incurs costs or damages in order to comply with these regulations or to obtain a license under these regulations. For all new and

proposed construction, the applicant or licensee must submit for building plan approval by the department before construction begins.

E. Existing or

renovated construction: If the proposed CTC includes any remodeling, renovations or additions or new construction of any type, the building plans and specifications covering all portions of the proposed work delineating all existing construction and all new or proposed construction shall be and submitted to the department for review and approval. Submit phasing plan if project construction will be phased. New facilities proposed for licensure in existing buildings must comply with all requirements building requirements as if it were completely new construction. If the CTC is located within another licensed facility such as a hospital, the life safety inspection will still be required for compliance with 7.30.13 NMAC requirements. For residential CTC programs, the bed count must be separate from the licensed bed count of the original licensed facility. If a CTC is a separate building associated with an existing license, requirements of this regulation apply to that building.

F. Completed

construction: All new or renovated construction completed shall comply with the plans and specifications approved by the department in the plan review process and prior to construction, these rules, and all other applicable rules and codes; and any of the department's approval(s) shall not waive any other rules or other applicable building and code requirements enforceable by other authorities having jurisdiction. Applicant must receive initial life safety code approval and a temporary license from this department prior to accepting or admitting any clients into the CTC.

G. Additional

documents required for license application: The department reserves the right to require an applicant to provide all additional documents, as part of its license application, in

order for the department to determine whether the applicant and the CTC are in full compliance with these regulations, as well as all other applicable statutes and regulations. At minimum, additional documents required to be provided as part of the initial licensure process prior to the issuance of a temporary license, include, but are not limited to:

(1) Building

approvals: The applicant must submit all building approvals required for the CTC to operate in the jurisdiction in which it is located, including but not limited to:

(a)

written zoning approval, building permit final approval, or certificates of occupancy from the appropriate authority (state, city, county, or municipality) for business occupancy; and

(b)

written fire marshal approvals from the fire safety authority having jurisdiction.

(2)

Environment department

approvals: If applicable or required, the applicant must provide written approval from the New Mexico environment department for the following:

(a)

private water supply;

(b)

private waste or sewage disposal;

(c)

kitchen/food service;

(d)

x-ray equipment (if any).

(3) Board of

pharmacy approvals: A copy of CTC's drug permit issued by the state board of pharmacy must be provided.

(4) Program

description: The applicant must submit with its license application a program outlines consistent with these regulations which includes at a minimum, the following information:

(a)

a list and description of all services and the scope of those services to be provided by the proposed CTC;

(b)

projected number of clients to be

served monthly, both residential and non-residential;

(c) a list of staffing and personnel requirements and duties to be performed;

(d) proposed staffing plans for both residential and non-residential programs;

(e) photocopies of written operating agreements with the following: treatment facilities for behavioral health and physical health care needs that are beyond the scope of the CTC;

(f) admission and discharge criteria; and

(g) an organizational structure diagram or chart including the administrator, governing body, clinical director, director of nursing, direct care staff, and other staff.

(5) Policies

and procedures: The applicant must submit with its license application a copy of the CTC's policies and procedures with a crosswalk to these regulations to show compliance. [7.30.13.10 NMAC - N, 10/30/2018]

7.30.13.11 LICENSE TYPES, VARIANCES & WAIVERS:

A. Temporary license:

(1) The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations.

(2) The licensing authority may, at its sole discretion, issue a temporary license before clients are admitted, provided that the CTC has:

(a) submitted a license application, with required supporting documents;

(b) has met all of the applicable life safety code requirements; and

(c) its program, policies, and procedures have been reviewed and approved for compliance with these regulations.

(3) a temporary license is not guaranteed

under these regulations and shall be limited and restricted to:

(a) a period, not to exceed 120 days, during which the CTC must correct all specified deficiencies;

(b) no more than two consecutive temporary licenses shall be issued in accordance with applicable statutes and regulations;

(c) a finding that the applicant is qualified and in full compliance with life safety code requirements;

(d) the CTC being allowed to accept clients and provide care services, subject to any requirements and restrictions attached to the temporary license;

(e) a statement from the applicant that they are qualified and in full compliance with these regulations and the owner has requested an initial health survey from the licensing authority.

B. Annual license:

An annual license is issued for a one-year period to a CTC which has met all requirements of these regulations. If a temporary license is issued, once the department has issued a written determination of full compliance with these regulations, an annual license will be issued with the renewal date of the annual license based upon the initial date of the first temporary license.

C. Amended license:

A licensee must apply to the licensing authority for an amended license when there is a change of administrator or when there is a change of name for the CTC, but an amended license shall only be issued if the administrator is not an owner. If the administrator is also the owner, a new license application must be submitted as provided in this regulation. The amended license application must:

(1) be on a form, or filed electronically if available, as required by the licensing authority;

(2) be accompanied by the required fee for

the amended license; and

(3) be submitted within 10 working days of the change.

D. Variances and

waivers: At the licensing authority's sole discretion, an applicant or licensee may be granted variances and waivers of these regulations, provided the granting of such variance or waiver shall not jeopardize the health, safety or welfare of the CTC's clients, patients and staff and is not in violation of other applicable state and federal statutes and regulations. Variances and waivers are non-transferrable. Waivers and variances may be revoked at the discretion of the licensing authority due to changes in state or federal regulations, or change of circumstances that may jeopardize the health, safety or welfare of clients.

(1) all variances shall be in writing, attached to the license and shall expire upon remodel of the CTC or change of ownership;

(2) all waivers shall be in writing, attached to the license and shall be limited to the term of the license. Upon renewal of a license, waivers shall only be extended or continued at the sole discretion of the licensing authority. [7.30.13.11 NMAC - N, 10/30/2018]

7.30.13.12 LICENSE RENEWAL:

A. Licensee must submit a renewal application, electronically, if available, or on forms authorized by the licensing authority, along with the required license fee at least 30 days prior to expiration of the current license. The applicant shall certify that the CTC complies with all applicable state and federal regulations in force at the time of renewal and that there has been no new construction or remodeling or additions, which differ from the plans provided and reviewed with the prior license application. If there has been any construction, remodeling, or additions to the CTC since issuance of the last license, and the construction has not been previously approved by

the department, the license renewal applicant shall be required to comply with all construction documentation requirements under these regulations when applying for the license renewal. The department reserves the right to require that a renewal applicant provide all additional documents, including any necessary proof of current compliance, as part of its license renewal application for the department to determine whether the applicant and the CTC are in full compliance with these regulations.

B. Upon receipt of the renewal application and the required fee, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the CTC is in substantial compliance with these regulations and all other applicable state and federal regulations.

C. If the existing license expires and the licensee has failed to submit a renewal application, the department may charge the applicant a civil monetary penalty of one hundred dollars (\$100) for each day, in accordance with Paragraph (2) of Section 24-1-5 NMSA 1978, as amended, that the CTC continues to operate without a license providing that during such time the CTC remains in full compliance with these regulations. If the CTC does not renew its license and continues to operate without paying civil monetary penalties and without being in full compliance with these regulations, the CTC shall cease operations until it obtains a new license through the initial licensure procedures, and shall still be required to pay civil monetary penalties. Under Section 24-1-5 NMSA 1978, as amended, no crisis triage center shall be operated without a license and any such failure may subject the operators to various sanctions and legal remedies, including at a minimum the imposition of civil monetary penalties.

D. It shall be the sole responsibility and liability of the licensee to be aware of the status, term and renewal date of its license. The licensing authority shall not be

responsible to notify the CTC of the renewal date or the expiration date of the CTC's license.

E. After issuance of the initial license, if there has been no construction, remodeling or additions to the CTC and the CTC is in substantially the same condition as the plans on file with the department, and the CTC is in substantial compliance with these regulations and provides an application and fee the CTC may be issued a license renewal. The department, at its sole discretion, reserves the right to require additional documentation of compliance with these regulations and all applicable state and federal statutes and regulations by the licensee at the time of license renewal.

[7.30.13.12 NMAC - N, 10/30/2018]

7.30.13.13 POSTING OF

LICENSE: The CTC's official license must be posted in a conspicuous place on the licensed premises in an area visible to the public.

[7.30.13.13 NMAC - N, 10/30/2018]

7.30.13.14 NON-TRANSFERABLE RESTRICTION

ON LICENSE: A license granted under these regulations is not transferable to any other owner, whether an individual or legal entity, or to another location. The department shall not guarantee or be liable for or responsible for guaranteeing the transfer of the license to any other owner or other location. The existing license shall be void and must be returned to the licensing authority when any one of the following situations occurs:

- A.** any ownership interest in the CTC changes;
- B.** the CTC changes location;
- C.** the licensee of the CTC changes; or
- D.** the CTC discontinues operation.

[7.30.13.14 NMAC - N, 10/30/2018]

7.30.13.15 CHANGE OF

OWNERSHIP: When a change of ownership occurs, an initial license

application must be submitted by the new owner per the requirements in this section. The new owner must demonstrate compliance with these regulations the instant it takes responsibility of the CTC. The licensing authority may, at its sole discretion, approve a change of ownership. In addition to the requirements in Section 7.30.13.10 NMAC - application for licensure, the new owner must submit the following at least 60 days prior to completion of the change of ownership:

A. An explanation of terms of the change of ownership and the date the ownership will change.

B. Documents evidencing the change of ownership such as proof of sale or donation, lease of any portion of the CTC or other relevant documents.

C. Building plans of the current structure with any modifications known to the current or new owner.

D. A continuity of care transition plan that describes how the new owner will maintain the provision of services and continuity of care, keep residential clients safe and meet the requirements of these regulations at the instant it takes responsibility of the CTC. The plan must state the actions that will occur, the party responsible for taking each action, and the expected date of completion for each action. The plan must include the following:

(1) list of all residential clients at the time of notice to the licensing authority;

(2) review and update of all residential client assessments. All assessments must be current and accurate;

(3) review and update of all crisis intervention plans for clients receiving service at the time of transition and for all residential clients. All plans must be current and accurate;

(4) staffing as required in Section 7.30.13.29 NMAC of these rules and the number and positions of current staff that will be hired by the new owner;

(5) staff

training as required in Section 7.30.13.32 NMAC;

(6)

identification of all waivers or variances held by the current owner, and submission of any necessary waivers or variances. All waivers or variances held by the current owner are void upon the change of ownership;

(7) signed

transfer agreements as required in Section 7.30.13.22 NMAC of these rules.

(8) Failure

by any individual or entity to apply for and obtain a new license while continuing to operate under these regulations, shall be considered in violation of these regulations and the secretary may issue a cease-and-desist order, to protect human health or safety or welfare. The unlicensed CTC may request a hearing that shall be held in the manner provided under these regulations and all other applicable regulations.

[7.30.13.15 NMAC - N, 10/30/2018]

7.30.13.16 AUTOMATIC EXPIRATION OR TERMINATION OF LICENSE:

An existing license shall automatically expire at midnight on the day indicated on the license, unless it is renewed sooner, or it has been suspended or revoked.

A. If a CTC

discontinues operation, is sold, leased or otherwise changes any ownership interest or changes location, the existing license shall automatically expire at midnight on the date of such action.

B. Failure by any

owner or new owner to apply for a renewal or new license, while continuing to operate under these regulations, shall be considered a violation and subject to the imposition of civil monetary penalties, sanctions or other actions for operating without a license, allowed under these regulations and all other applicable statutes and regulations.

[7.30.13.16 NMAC - N, 10/30/2018]

7.30.13.17 ENFORCEMENT:

A. Suspension of license without prior hearing: If immediate action is required to protect human health and safety, the licensing authority may act in accordance with Section 24-1-5 NMSA 1978, as amended, and suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.

B. An initial license application or a renewal license application may be denied, or an existing license may be revoked or suspended, or intermediate sanctions or civil monetary penalties may be imposed, after notice and opportunity for a hearing, for any of the following:

(1) failure to

comply with any provision of these regulations;

(2) failure to

allow access to the CTC and survey(s) by authorized representatives of the licensing authority;

(3) allowing

any person to work at the CTC while impaired physically or mentally or under the influence of alcohol or drugs in a manner which harms the health, safety or welfare of the clients, staff or visitors;

(4) allowing

any person, subject to all applicable statutes and regulations, to work at the CTC if that person is listed on the employee abuse registry, nurse aid registry, or considered an unemployable caregiver or has a disqualifying conviction under the caregiver's criminal history screen act, as amended, and related regulations, as amended.

(5) the list

above shall not limit the department from imposing sanctions and civil monetary penalties under all applicable statutes, regulations and codes.

[7.30.13.17 NMAC - N, 10/30/2018]

7.30.13.18 HEARING

PROCEDURES: Hearing procedures for an administrative appeal of an adverse action taken by the department against a CTC's license will be held in accordance

with applicable rules relating to adjudicatory hearings, including but not limited to, Section 7.1.2 NMAC, as amended. A copy of the above regulations will be furnished at the time an adverse action is taken against a CTC's license by the licensing authority, if the regulations cannot be obtained from a public website.

[7.30.13.18 NMAC - N, 10/30/2018]

7.30.13.19 FACILITY SURVEYS:

A. Application for

licensure, whether initial or renewal, shall constitute permission for unrestricted entry into and survey of a CTC by authorized licensing authority representatives at times of operation during the pendency of the license application, and if licensed, during the licensure period.

B. Surveys may be announced or unannounced at the sole discretion of the licensing authority.

C. Upon receipt of a

report of deficiency from the licensing authority, the licensee or his/her representative shall be required to submit a plan of correction to the licensing authority within 10 working days stating how the CTC intends to correct each violation noted and the expected date of completion. All plans of correction for deficiencies, if any, shall be disclosed in compliance with applicable statutes and regulations. A plan of correction is not confidential once it has been approved and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a CTC license, including to prove licensee compliance violations. The plan of correction must contain the following:

(1) what

measures will be put into place or what systematic changes will be made to ensure the deficient practice does not recur;

(2) the

anticipated implementation date (a reasonable time-frame is allowed);

(3) how the

corrective action will be monitored to ensure compliance;

(4) what

quality assurance indicators will be put into place;

(5) who will be responsible to oversee their monitoring; and

(6) plan of correction shall be signed and dated by the administrator or authorized representative.

D. The licensing authority may at its sole discretion accept the plan of correction as written or require modifications of the plan by the licensee.

[7.30.13.19 NMAC - N, 10/30/2018]

7.30.13.20 REPORTING OF INCIDENTS:

All CTC's licensed under these regulations must comply with all incident intake, processing, training and reporting requirements under these regulations, as well as with all other applicable statutes and regulations. All facilities shall report to the licensing authority any serious incidents or unusual occurrences which have threatened, or could have threatened the health, safety and welfare of the clients, including but not limited to:

A. fire, flood or other man-made or natural disasters including any damage to the CTC caused by such disasters and any incident which poses or creates any life safety or health hazards;

B. any outbreak of contagious diseases and diseases dangerous to the public health;

C. any human errors by staff and employees which may or has resulted in the death, serious illness, hospitalization, or physical impairment of a client or staff; and

D. abuse, neglect, exploitation, and injuries of unknown origin and other reportable incidents in accordance with 7.1.13 NMAC, as may be amended from time to time.

[7.30.13.20 NMAC - N, 10/30/2018]

7.30.13.21 GOVERNING BODY:

All CTC's licensed under these regulations must have a formally constituted governing body or operate under the governing body of the legal entity, which has ultimate authority over the CTC.

A. The governing body shall:

(1) establish and adopt bylaws that govern its operation;

(2) approve policies and procedures;

(3) appoint an on-site administrator or chief executive officer/administrator for the CTC; and

(4) review the performance of the administrator/ chief executive officer at least annually.

B. The governing body may appoint committees consistent with the size and scope of the CTC.

[7.30.13.21 NMAC - N, 10/30/2018]

7.30.13.22 POLICIES AND PROCEDURES:

The CTC shall establish written policies and procedures that are reviewed annually and approved by the governing body, which govern the CTC's operation. The administrator shall ensure that these policies and procedures are adopted, administered and enforced to provide quality services in a safe environment. At a minimum, the CTC's written policies and procedures shall include how the CTC intends to comply with all requirements of these regulations and address:

A. the establishment, composition, and responsibilities of the governing body;

B. administration including the minimum qualifications of the administrator, the process to hire an administrator, and define the administrator's authority, responsibility, and accountability including plans for the administrator's absence;

C. quality assurance and improvement systems;

D. incident management system;

E. the maintenance of the CTC, equipment and supplies; inspection and maintenance of emergency equipment; maintenance of emergency supplies; maintenance, upkeep and cleaning of the building(s) and equipment; fire and emergency evacuation procedures; and proper

disposal of waste liquids used for cleaning contaminated areas;

F. quality of care and services including appropriate and inappropriate admission and discharge criteria; and client risk assessment;

G. referral of clients for services; transfer of clients to a hospital or other CTC or program; ambulance transfer services; and emergency procedures and resuscitative techniques;

H. infectious waste and biohazard disposal in accordance with all applicable statutes and regulations;

I. infection control and prevention;

J. staffing plan, personnel records, and personnel including written job descriptions for all staff with necessary qualifications consistent with these rules; minimum staffing; and staff development;

K. maintenance of the client health record including protection of client confidentiality and privacy as required by law; secure release of medical information and records; and safe handling and storage of client records including appropriate document destruction procedures;

L. the retention, maintenance, security and destruction of client, personnel and CTC records;

M. research procedures for any research being conducted at the CTC in compliance with these regulations;

N. dietary services including: meal service; staff in-service training; dietary records; clean and sanitary conditions; and food management;

O. housekeeping services to keep the CTC safe, clean, and free of hazards and clutter;

P. laundry services for the CTC's laundry and resident's laundry including handling, process and storage of clean and dirty laundry;

Q. pharmacy practices including the storage, administration, and disposal of medications; medication management; and documentation;

R. laboratory services;

S. client's personal

belongings including locked storage and contraband;

T. client rights;

U. safety management plan including, but not limited to, risk assessment, control of potentially injurious items, crisis prevention and intervention, physical restraint, and mitigation of high risk behaviors including suicide and assault. The safety plan shall follow a least to most restrictive sequence;

V. authorized entry to or exit from the CTC including the residential and outpatient components;

W. withdrawal management services; and

X. primary source verification of licenses, credentials, experience and competence of staff. [7.30.13.22 NMAC - N, 10/30/2018]

7.30.13.23 QUALITY IMPROVEMENT SYSTEMS:

Each CTC shall establish and maintain quality improvement systems including policies and procedures for quality assurance and quality improvement and have a quality committee.

A. The CTC shall establish a quality committee comprised at a minimum of the administrator, clinical director, director of nursing, licensed mental health professional, certified peer support worker, and psychiatrist. Other committee members may be specified by rules governing payor requirements. Members may participate on the quality committee by teleconference. The committee shall establish and implement quality assurance and quality improvement systems that monitor and promote quality care to clients. The systems are approved by the governing body and updated annually.

- (1)** the quality improvement systems must include:
- (a)** chart reviews;
 - (b)** annual review of policies and procedures;
 - (c)** data collection, and other program

monitoring processes;

(d) data analyses;

(e) identification of events, trends and patterns that may affect client health, safety or treatment efficacy;

(f) identification of areas for improvement;

(g) intervention plans, including action steps, responsible parties, and completion time; and,

(h) evaluation of the effectiveness of interventions.

(2) when areas of concern or potential problems are identified by the committee, the CTC shall act as soon as possible to avoid and prevent risks to clients.

(3) the quality committee shall take and maintain meeting minutes.

B. The quality committee shall review at a minimum, the following:

- (1)** high-risk situations and critical incidents (such as suicide, death, serious injury, violence and abuse, neglect and exploitation) within 24 hours;
- (2)** medical emergencies;
- (3)** medication variance;
- (4)** infection control;
- (5)** emergency safety interventions including any instances physical restraints; and
- (6)** environmental safety and maintenance.

C. The quality committee is responsible for the implementation of quality improvement processes.

D. The quality committee shall submit a quarterly report to the governing body for review and approval.

E. The governing body shall evaluate the CTC's effectiveness in improving performance.

[7.30.13.23 NMAC - N, 10/30/2018]

7.30.13.24 RISK

ASSESSMENT:

A. The CTC shall develop policies and procedures addressing risk assessment and mitigation including, but not limited to: assessments, crisis intervention plans, treatment, approaches to supporting, engaging, and problem solving, staffing, levels of observation and documentation. The policies and procedures must prohibit seclusion and address physical restraint, if used, and the CTC's response to clients that present with imminent risk to self or others, assaultive and other high-risk behaviors.

B. Use of seclusion is prohibited. The use of physical restraint must be consistent with federal and state laws and regulation.

C. Physical restraint, as defined in these regulations, shall be used only as an emergency safety intervention of last resort to ensure the physical safety of the client and others, and shall be used only after less intrusive or restrictive interventions have been determined to be ineffective.

D. Physical restraint shall not be used as punishment or for the convenience of staff.

E. Physical restraint are implemented only by staff who have been trained and certified by a CYFD or HSD recognized program in the prevention and use of physical restraint. This training emphasizes de-escalation techniques and alternatives to physical contact with clients as a means of managing behavior and allows only the use of reasonable force necessary to protect the client or other person from imminent and serious physical harm. Clients and youth do not participate in the physical restraint of other clients and youth.

F. Crisis intervention plans must document the use of physical restraints and address: the client's medical condition(s); the role of the client's history of trauma in his/her behavioral patterns; specific suggestions from the client regarding prevention of future physical interventions.

G. All clients physically restrained shall be afforded full privacy away from other clients receiving services.

H. A chemical restraint shall not be utilized under any circumstance. A chemical restraint is a drug or medication when it is used as a restriction to manage the client's behavior or restrict the client's freedom of movement, and is not a standard treatment or dosage for the client's condition. If a drug or medication is used as a standard treatment to address the assessed current symptoms and needs of a client with a particular medical or psychiatric condition, its use is not considered a chemical restraint.

I. Mechanical restraint shall not be utilized under any circumstances. Mechanical restraint is the use of a mechanical device(s) to physically restrict a client's freedom of movement, performance of physical activity or normal access to his or her body and is distinct from physical restraint.

J. The staff implementing the physical restraint shall conduct a debriefing, with the client present if possible, immediately following the incident to include the identification of the precipitating event, unsafe behavior and preventive measures with the intent of reducing or eliminating the need for future physical restraint. The debriefing shall be documented in the client's record.

K. The client's crisis intervention plan shall be updated: within 24 hours of admission or prior to discharge, whichever comes first; and following physical restraint use to incorporate the debriefing and changes needed to lessen the chance of the situation reoccurring.

L. Each incident of physical restraint shall be documented in the client's record including:

- (1) the less intrusive interventions that were attempted or determined to be inappropriate prior to the incident;
- (2) the precipitating event immediately preceding the behavior that prompted

the use of physical restraint;

(3) the behavior that prompted the use of a physical restraint;

(4) the names of the mental health professional who observed the behavior that prompted the use of the physical restraint;

(5) the names of the staff members implementing and monitoring the use of physical restraint; and

(6) a description of the of the physical restraint incident, including the type and length of the use of physical restraint, the client's behavior during and reaction to the physical restraint and the name of the supervisor informed of the use of physical restraint.

M. Physical restraints orders are issued by a restraint/clinician within one hour of initiation of physical restraint and include documented clinical justification for the use of physical restraint.

(1) if the client has a treatment team physician or advanced practice registered nurse and he or she is available, only he or she may order physical restraint;

(2) if physical restraint is ordered by a restraint clinician, not the client's treatment team physician or advanced practice registered nurse, the restraint clinician will contact the client's treatment team physician or advanced practice registered nurse as soon as possible to inform him or her of the situation requiring the physical restraint, and document in the client's record the date and time the treatment team physician or advanced practice registered nurse was consulted and the information imparted;

(3) if the order for physical restraint is verbal, the verbal order must be received by a restraint/clinician or a New Mexico licensed registered nurse (RN) or practical nurse (LPN). The restraint/clinician must verify the verbal order in a signed, written form placed in the client's record within 24 hours after the order is issued;

(4) each

order for physical restraint must be documented in the client's record and must include:

(a) the name of the restraint/clinician ordering the physical restraint;

(b) the date and time the order was obtained;

(c) the emergency safety intervention ordered, including the length of time;

(d) the time the emergency safety intervention began and ended;

(e) the time and results of one-hour assessment(s), if ordered;

(f) the emergency safety situation that required the client to be physically restrained; and

(g) the name, title, and credentials of staff involved in the emergency safety intervention.

N. Suicide risk interventions must include the following:

(1) a registered nurse or other licensed mental health professional may initiate suicide precautions and must obtain physician or advanced practice registered nurse order within one hour of initiating the precautions;

(2) modifications or removal of suicide precautions shall require clinical justification determined by an assessment and shall be ordered by a physician or advanced practice registered nurse and documented in the clinical record;

(3) staff and client shall be debriefed immediately following an episode of a suicide attempt or gesture, identifying the circumstances leading up to the suicide attempt or gesture;

(4) an evaluation of the client by a medical, psychiatric or independently licensed mental health provider must be done immediately, or the client must be transferred to a higher level of care immediately.

[7.30.13.24 NMAC - N, 10/30/2018]

7.30.13.25 CLIENT ACCEPTANCE, ADMISSION AND DISCHARGE CRITERIA:

- A.** The CTC shall develop admission and discharge criteria related to stabilization of behavioral health crises including out-patient and short-term residential stabilization.
- B.** The CTC shall post operating and admission hours in a location visible from the exterior of the facility.
- C.** If a client is not admitted to the CTC, the CTC shall maintain documentation of the rationale for the denial of services to the individual and any referrals made.
- D.** Admission criteria for adults and youth must be available in writing to all clients and visitors to the CTC.
- E.** Materials describing services offered, eligibility requirements and client rights and responsibilities must be provided in a form understandable to the client with consideration of the client's primary language, and the mode of communication best understood by persons with visual or hearing impairments, as applicable.
- F.** The CTC shall not refuse to admit a client solely on the basis of the individual living in the community on a court ordered conditional release.
- G.** The CTC shall conduct an assessment for each client presenting for admission. The admission assessment shall contain an assessment of past trauma or abuse, how the individual served would prefer to be approached should he become dangerous to himself or to others and the findings from this initial assessment shall guide the process for determining interventions.
- H.** All residential admissions of youth 14 years of age and older must comply with applicable state and federal laws.
- I.** Staff shall inspect clients, their clothing, and all personal effects for contraband and weapons before admission to the residential component to ensure the safety of the

- patient and staff.
- J.** Discharge planning shall begin upon admission.
- K.** Prior to a client returning to a less restrictive environment, staff, with the consent of the client, shall work with the client's support system, as appropriate, to prepare the client for discharge.
- L.** Discharge plan and summary information shall be provided to the client at the time of discharge that includes:
 - (1)** significant findings relevant to the client's recovery;
 - (2)** client crisis stabilization plan and progress;
 - (3)** recommendations and documentation for continued care, including appointment times, locations and contact information for providers;
 - (4)** recommendations for community services if indicated with contact information for the services;
 - (5)** documentation of notification to the client's primary care practitioner, if applicable;
 - (6)** evidence of involvement by the client as documented by his signature or refusal to sign; and
 - (7)** signatures of all staff participating in the development of plan.
- M.** A copy of the discharge plan shall be provided to post discharge service provider(s). [7.30.13.25 NMAC - N, 10/30/2018]

7.30.13.26 PROGRAM SERVICES: A licensed mental health professional must assess each individual with the assessment focusing on the stabilization needs of the client. It must be done in a timely manner congruent with the urgency of the presenting crisis, and consistent with the policies and procedures. The assessment must include: medical and mental health history and status, the onset of illness, the presenting circumstances, risk assessment, cognitive abilities, communication

- abilities, social history and history as a victim of physical abuse, sexual abuse, neglect, or other trauma as well as history as a perpetrator of physical or sexual abuse.
- A.** The CTC shall provide education and clinical programming designed to meet the stabilization needs of each client and implement crisis stabilization plans.
- B.** Crisis stabilization plan - A licensed mental health professional must document a crisis stabilization plan to address needs identified in the assessment.
 - (1)** the crisis stabilization plan shall include at a minimum:
 - (a)** diagnosis, a problem statement or statement of needs to be addressed;
 - (b)** identification of behavioral health crisis leading to intake;
 - (c)** goals that address the presenting crisis, and are consistent with the client's needs, realistic, measurable, linked to symptom reduction, and attainable by the client during the client's projected length of stay;
 - (d)** specific treatment(s) provided, method(s) and frequency of treatment, and staff responsible for delivering treatment;
 - (e)** criteria describing evidence of stabilization;
 - (f)** discharge planning;
 - (g)** evidence of involvement by the client and legal guardian as documented by his signature or refusal to sign; and
 - (h)** signatures of all staff participating in the development of plan.
 - (2)** A copy of the individual crisis stabilization plan shall be provided to the client, and guardian if applicable.
 - (3)** When program services are offered in a group setting, groups for adults and groups for youth must be separate. [7.30.13.26 NMAC - N, 10/30/2018]

7.30.13.27 CLIENT

RIGHTS:

A. All licensed facilities shall understand, protect and respect the rights of all residents. Prior to admission to a CTC, a client, parent, shall be given the applicable written description of the adult's or youth's legal rights, translated into client's preferred language, if necessary, to meet the client's understanding.

B. A written copy of the adult client's legal rights shall be provided to the adult client, or agent, if applicable, or to the most significant responsible party in the following order:

- (1) the client's spouse;
- (2) significant other;
- (3) any of the client's adult children;
- (4) the client's parents;
- (5) the client's advocate.

C. The client rights shall be posted in a conspicuous public place in the facility and shall include the telephone numbers to contact the department to file a complaint.

D. To protect client rights, the CTC shall:

- (1) treat all clients with courtesy, respect, dignity and compassion;
- (2) not discriminate in admission or services based on gender, gender identity, sex, sexual orientation, client's age, race, color, religion, physical or mental disability, or national origin;
- (3) provide clients written information about all services provided by the CTC and their costs and give advance written notice of any changes;
- (4) provide clients with a clean, safe and sanitary living environment;
- (5) provide a humane psychological and physical environment of care for all clients;
- (6) provide the right to privacy, including privacy

during assessments, examinations, consultations and treatment;

(7) protect the confidentiality of the client's clinical record;

(8) protect the right to personal privacy, including privacy in personal hygiene; privacy during visits with a spouse, family member or other visitor; and reasonable privacy in the client's own room;

(9) protect the client's right to receive visitors during designated visiting hours except when restricted for good cause pursuant to a physician's order;

(10) protect the client's right to receive visits from his attorney, physician, psychologist, clergyman, or social worker in private irrespective of visiting hours;

(11) provide clients the ability to send and receive private correspondence, as well as reasonable private access to telephone calls and, in cases of personal emergencies, reasonable use of long-distance calls;

(12) ensure that clients:

- (a) are free from physical and emotional abuse, neglect, and exploitation;
- (b) are free to participate or abstain from the practice of religion and shall be afforded reasonable accommodations to worship;
- (c) have the right to reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment;
- (d) have the right to voice grievances to the CTC staff, public officials, any state agency, or any other person, without fear of reprisal or retaliation;
- (e) have the right to prompt and adequate medical attention for physical ailments;
- (f) have the right to have their grievance addressed within five days;
- (g)

have the right to participate in the development of their crisis stabilization plan;

(h) have the right to participate in treatment decisions and formulate advance directives such as living wills and powers of attorney;

(i) have the right to refuse treatment and to be free from unnecessary or excessive medication; and

(j) have the right to manage and control their personal finances.

[7.30.13.27 NMAC - N, 10/30/2018]

7.30.13.28 CLIENT

CLINICAL RECORD: The client clinical records maintained by a crisis triage center in a paper-based or electronic system shall document the degree and intensity of the treatment provided to clients who are furnished services by the CTC. A client's clinical record shall contain at a minimum:

- A.** the client's name and address;
- B.** name, address, and telephone number of agent, or representatives;
- C.** the source of referral and relevant referral information;
- D.** all reports from client assessment (see program services assessment);
- E.** the signed and dated informed consent for treatment including all medications and transfers;
- F.** all additional medical and clinical documentation;
- G.** the original crisis stabilization plan and all revisions;
- H.** documentation of all treatment;
- I.** laboratory and radiology results, if applicable;
- J.** documentation of physical restraint observations, if utilized;
- K.** a record of all contacts with medical and other services;
- L.** a record of medical treatment and administration of

medication, if administered;

M. an original or original copy of all physician medication and treatment orders signed by the physician;

N. signed consent for the release of information, if information is released;

O. discharge plan.
[7.30.13.28 NMAC - N, 10/30/2018]

7.30.13.29 STAFFING REQUIREMENTS:

A. Minimum staffing requirements:

(1) The CTC shall have an on-site administrator, which can be the same person as the clinical director.

(2) The CTC shall have a full time clinical director appropriately licensed to provide clinical oversight.

(3) The CTC shall have an RN present on-site 24 hours a day, seven days a week or as long as clients are present in programs that do not offer residential services, to provide direct nursing services.

(4) An on-call physician or advanced practice registered nurse shall be available 24 hours a day by phone, and available on-site as needed or through telehealth.

(5) Consultation by a psychiatrist or prescribing psychologist may be provided through telehealth.

(6) The CTC shall maintain sufficient staff including direct care and mental health professionals to provide for supervision and the care of residential and non-residential clients served by the CTC, based on the acuity of client needs.

(7) At least one staff trained in basic cardiac life support (BCLS) and first aid shall be on duty at all times. In addition, one staff trained in the use of the automated external defibrillator (AED) equipment shall also be on duty.

B. Other staff requirements:

(1) The CTC

shall ensure that the type and number of professional staff are:

(a) licensed, certified or credentialed in the professional field as required, and practice within the scope of the license;

(b) present in numbers to provide services, supports, care, treatment and supervision to clients as required; and

(c) experienced and competent in the profession they are licensed or practice.

(2) The CTC shall comply with all applicable laws, rules and regulations governing caregivers' criminal history screen requirements and employee abuse registry requirements.

(3) The CTC shall ensure that, within the first sixty days of providing direct care to individuals, all staff, volunteers and contractors having direct contact with clients shall receive required training.

(4) The CTC shall be staffed to ensure the safety of clients when staff are accused of abuse, neglect or exploitation.
[7.30.13.29 NMAC - N, 10/30/2018]

7.30.13.30 MINIMUM STAFF QUALIFICATIONS:

A. Administrator:
(1) Must be at least 21 years of age.

(2) The administrator shall possess experience in acute mental health and hold at least a bachelor's degree in the human services field or be a registered nurse with experience or training in acute mental health treatment.

B. Clinical director:
(1) Be at least 21 years of age.

(2) Be a licensed independent mental health professional or certified nurse practitioner or certified nurse specialist with experience and training in acute mental health treatment and withdrawal management services, if withdrawal management services are provided.

C. Registered nurse:

(1) Must be at least 18 years of age.

(2) Must have a current NM Registered Nurse license.

(3) Must possess experience and training in acute mental health treatment, and withdrawal management services if withdrawal management services are provided.

D. Direct service staff must be at least 18 years of age.
[7.30.13.30 NMAC - N, 10/30/2018]

7.30.13.31 PERSONNEL RECORDS:

A. The CTC shall have policies and procedures for managing personnel information and records.

B. Staff scheduling records shall be maintained for at least three years.

C. Employee records shall be kept at the CTC and include:

(1) employment application;

(2) training records;

(3) licenses and certifications;

(4) caregiver criminal history screening documentation pursuant to Section 7.1.9 NMAC; and

(5) employee abuse registry documentation pursuant to Section 7.1.12 NMAC.
[7.30.13.31 NMAC - N, 10/30/2018]

7.30.13.32 STAFF TRAINING:

A. Training for each new employee and volunteer who provides direct care shall include a minimum of 16 hours of training and be completed prior to providing unsupervised care to clients.

B. At least 12 hours of on-going training shall be provided to staff that provides direct care at least annually; the training and proof of competency shall include at a minimum:

(1) behavioral health interventions;

(2) crisis interventions;

(3) substance use disorders and co-occurring disorders;

(4) withdrawal management protocols and procedures, if withdrawal management is provided;

(5) clinical and psychosocial needs of the population served;

(6) psychotropic medications and possible side effects;

(7) ethnic and cultural considerations of the geographic area served;

(8) community resources and services including pertinent referral criteria;

(9) treatment and discharge planning with an emphasis on crisis stabilization;

(10) fire safety and evacuation training;

(11) safe food handling practices (for persons involved in food preparation), to include:

(a) instructions in proper storage;

(b) preparation and serving of food;

(c) safety in food handling;

(d) appropriate personal hygiene; and

(e) infectious and communicable disease control.

(12) confidentiality of records and client information;

(13) infection control;

(14) client rights;

(15) reporting requirements for abuse, neglect or exploitation in accordance with Section 7.1.13 NMAC;

(16) smoking policy for staff, clients and visitors;

(17) methods to provide quality client care;

(18) emergency procedures; and

(19) adverse medication reactions;

(20) the proper way to implement a crisis intervention plans.

C. Documentation of orientation and subsequent trainings shall be kept in the personnel records at the facility.
[7.30.13.32 NMAC - N, 10/30/2018]

7.30.13.33 MINIMUM SAFETY REQUIREMENTS:

A. The CTC shall have policies and procedures regarding authorized entry to or exit from the CTC including the residential component.

B. Control of potentially injurious items shall be clearly defined in policy to include:

(1) prohibition of flammables, toxins, ropes, wire clothes hangers, sharp pointed scissors, luggage straps, belts, knives, shoestrings, or other potentially injurious items;

(2) management of housekeeping supplies and chemicals, including procedures to avoid access by individuals during use or storage. Whenever practical, supplies and chemicals shall be non-toxic or non-caustic;

(3) safeguarding use and disposal of nursing and medical supplies including drugs, needles and other “sharps” and breakable items;

(4) the use of durable materials for furniture not capable of breakage into pieces that could be used as weapons or present a hanging risk.

C. To the fullest extent permitted by law, weapons shall be prohibited at the CTC.

D. All law enforcement officers or other individuals authorized by law to carry firearms shall be asked to leave their firearms locked in their vehicles or placed in a secure lockbox in an area in the CTC which is not accessible to clients.

E. The CTC shall develop and implement policies and procedures that describe interventions that prevent crises, minimize incidents when they occur, and are organized in

a least to most restrictive sequence. The written policies and procedures shall:

(1) emphasize positive approaches to interventions;

(2) protect the health and safety of the individual served at all times; and

(3) specify the methods for documenting the use of the interventions.
[7.30.13.33 NMAC - N, 10/30/2018]

7.30.13.34 NUTRITION:

The CTC shall provide planned and nutritionally balanced meals to its residential clients and any client treated at the CTC for 8 hours or longer from the basic food groups in accordance with the “recommended daily dietary allowance” of the American dietetic association, the food and nutrition board of the national research council, or the national academy of sciences. Meals shall meet the nutritional needs of the residents in accordance with the current USDA dietary guidelines for Americans, vending machines shall not be considered a source of snacks. Dietary services: The CTC will develop and implement written policies and procedures that are maintained on the premises. All CTC food service operations for residents shall comply with current federal and state laws and rules concerning food service and shall include:

A. at least three nutritious meals per day shall be served;

B. no more than 14 hours may elapse between the end of an evening meal and the beginning of a morning meal;

C. therapeutic diets shall be provided when ordered by the physician;

D. under no circumstances may food be withheld for disciplinary reasons;

E. each CTC shall have seating capacity to reflect the licensed capacity, although clients may eat or be served in shifts during daily operations;

F. nutritional snacks shall be available to each client; and

G. weekly menus shall be posted in the dining area.
[7.30.13.34 NMAC - N, 10/30/2018]

7.30.13.35

PHARMACEUTICAL SERVICES:

A. Pharmacological services shall be provided only on order by a prescribing professional and in accordance with the terms and conditions of such professional's license. These services may be administered or monitored, if self-administered, by nursing staff.

B. The CTC shall establish and implement policies, procedures and practices that guide the safe and effective use of medications and shall, at a minimum, address the following:

(1)

Medications shall be administered upon direct order from a licensed prescriber, and the orders for medications and care shall be written and signed by the licensed prescriber;

(2)

Medications shall be used solely for the purposes of providing effective treatment..

C. There shall be no standing orders for psychotropic medication.

(1)

Every order given by telephone shall be received by an RN or LPN and shall be recorded immediately and read back to the ordering physician. The order shall include the ordering physician's name and shall be signed by a physician within 24 hours. Such telephone orders shall include a note on the order that an order was made by telephone, and the content of, justification for, and the time and date of the order.

(2)

Medication management policies and procedures shall follow federal and state laws, rules and regulations, and shall direct the management of medication ordering, procurement, prescribing, transcribing, dispensing, administration, documentation, wasting or disposal and security, to include the management of controlled substances, floor stock, and physician sample medications.

(3) The CTC shall develop a policy on informed consent on medication, including the right to refuse medication and the CTC's plan for transfer of patients who lack capacity to consent to medications.

(4) The CTC shall develop and implement policies and procedures that describe actions to follow when adverse drug reactions and other emergencies related to the use of medications occur, and emergency medical care that may be initiated by a registered nurse in order to mitigate a life-threatening situation.

D. Medication distribution stations shall be in accordance with standards set forth by the New Mexico board of pharmacy.

E. Drugs and biologicals must be stored, prepared and administered in accordance to acceptable standards of practice and in compliance with the New Mexico state board of pharmacy.

F. Outdated drugs and biologicals must be disposed of in accordance with methods outlined by the New Mexico state board of pharmacy.

G. One individual shall be designated responsible for pharmaceutical services to include accountability and safeguarding.

H. Keys to the drug room or pharmacy must be made available only to personnel authorized by the individual having responsibility for pharmaceutical services.

I. Adverse reactions to medications must be reported to the physician responsible for the patient and must be documented in the patient's record.
[7.30.13.35 NMAC - N, 10/30/2018]

7.30.13.36 LABORATORY SERVICES:

A. Laboratory work and other diagnostic procedures deemed necessary shall be performed as ordered by the physician.

B. The CTC shall comply with clinical laboratory improvement amendments of 1988 (CLIA) requirements.

C. All lab test results

performed either at the CTC or by contract or arrangement with another entity must be entered into the patient's record.
[7.30.13.36 NMAC - N, 10/30/2018]

7.30.13.37 INFECTION CONTROL:

A. The CTC shall develop and implement policies and procedures for infection control and prevention. Policies shall include: educational course requirements; decontamination; disinfection and storage of sterile supplies; cleaning; and laundry requirements, and address the following:

(1) universal precautions when handling blood, body substances, excretions, secretions;

(2) proper disposal of biohazards;

(3) proper hand washing techniques;

(4) prevention and treatment of needle stick or sharp injuries; and

(5) the management of common illness likely to be emergent in the CTC service setting and specific procedures to manage infectious diseases.

B. The CTC's infection control risk assessment and plan is reviewed annually for effectiveness and revision, if necessary.

C. Staff shall be trained in and shall adhere to infection control practices, the release of confidential information and reporting requirements related to infectious diseases.

D. Where cleaning and decontamination of equipment and supplies are performed in the same room where clean or sterile supplies and equipment are stored, there shall be a physical separation of the clean or sterile supplies and equipment.

E. All special waste including blood, body fluids, sharps and biological indicators shall be disposed of in accordance with OSHA and the New Mexico environment department standards for biohazardous waste.

F. Each CTC shall

have policies and procedures for the handling, processing, storing and transporting of clean and dirty laundry.
[7.30.13.37 NMAC - N, 10/30/2018]

7.30.13.38 RESEARCH:

A. If a CTC is conducting research activities, the CTC must have written policies and procedures for conducting research, documentation that the study has received institutional review board (IRB) approval, and a consent form for each client involved in the research in the client's record.

B. When research is conducted by the CTC or by the employees or by affiliates of the CTC or when the CTC is used as a research site, such that the CTC's clients and staff are involved in or the subjects of research; the research must be conducted:

- (1) by qualified researchers, having evidence in formal training and experience in the conduct of clinical, epidemiologic or sociologic research;
- (2) in accordance with the written, approved research policies and procedures;
- (3) by staff trained to conduct such research; and
- (4) in a manner that protects the client's health, safety and right to privacy and the CTC and its clients from unsafe practices.
[7.30.13.38 NMAC - N, 10/30/2018]

7.30.13.39 CLIENT TRANSFERS:

A. The CTC shall have policies and procedures to stabilize and transfer clients in need of a higher level of care.

B. The CTC shall:

- (1) discuss recommendations for transfer with the client or client's legal guardian or agent and upon transfer, notify the client's legal guardian or agent;
- (2) make the determination as to the time and manner of transfer to ensure no further deterioration of the client during the transfer between facilities;

(3) specify the benefits expected from the transfer in the client's record;

(4) coordinate care with receiving facility prior to transfer; and

(5) send a copy of the client's record with the client upon transfer.
[7.30.13.39 NMAC - N, 10/30/2018]

7.30.13.40 BUSINESS HOURS:

The CTC shall post hours of operation and admissions on signage exterior to the building.
[7.30.13.40 NMAC - N, 10/30/2018]

7.30.13.41 PHYSICAL ENVIRONMENT AND GENERAL BUILDING REQUIREMENTS:

A. When construction of new buildings, additions, or alterations to existing buildings are contemplated, plans and specifications covering all portions of the work must be submitted to the licensing authority for plan review and approval prior to beginning actual construction. When an addition or alteration is contemplated, plans for the entire CTC must be submitted.

B. CTCs licensed pursuant to these regulations must be accessible to and useable by disabled employees, staff, visitors, and clients and in compliance with the American's with Disabilities Act (ADA), current edition.

C. All buildings of the premises providing client care and services will be considered part of the CTC and must meet all requirements of these regulations. Where a part of the CTC services is contained in another facility, separation and access shall be maintained as described in current building and fire codes.

D. A CTC applying for licensure pursuant to these regulations may have additional requirements not contained herein. The complexity of building and fire codes and requirements of city, county, or municipal governments may stipulate these additional requirements. Any additional requirements will be outlined by the appropriate building and fire authorities, and by the

licensing authority through plan review, consultation and on-site surveys during the licensing process.
[7.30.13.41 NMAC - N, 10/30/2018]

7.30.13.42 COMMON ELEMENTS FOR FACILITIES:

A. Public services shall include:

- (1) conveniently accessible wheelchair storage;
- (2) an ADA compliant reception and information counter or desk;
- (3) waiting areas;
- (4) conveniently accessible public toilets; and
- (5) drinking fountain (s) or water dispensers easily accessible to clients or other visitors.

B. Interview space(s) for private interviews related to mental health, medical information, etc., shall be provided.

C. General or individual office(s) for business transactions, records, administrative, and professional staff shall be provided. These areas shall be separated from public areas for confidentiality.

D. Special storage for staff personal effects with locking drawers or cabinets shall be provided.

E. General storage facilities for supplies and equipment shall be provided.
[7.30.13.42 NMAC - N, 10/30/2018]

7.30.13.43 PROVISIONS FOR EMERGENCY CALLS:

A. An easily accessible hard-wired telephone for summoning help, in case of emergency, must be available in the CTC.

B. A list of emergency numbers including, but not limited to, fire department, police department, ambulance services, local hospital, poison control center, and the department's division of health improvement's complaint hotline must be prominently posted by the telephone(s).
[7.30.13.43 NMAC - N, 10/30/2018]

7.30.13.44 PARKING:
Sufficient space for off-street parking for staff, clients and visitors shall be provided. A designated parking space(s) for one emergency, and one police vehicle shall be provided. Parking should be compliant with local zoning requirements and the 2009 New Mexico commercial building code, or current version.
[7.30.13.44 NMAC - N, 10/30/2018]

7.30.13.45 MAINTENANCE OF BUILDING AND GROUNDS:
Facilities must maintain the building(s) in good repair at all times. Such maintenance shall include, but is not limited to, the following:
A. all electrical, mechanical, water supply, heating, fire protection, and sewage disposal systems must be maintained in a safe and functioning condition, including regular inspections of these systems;
B. all equipment and materials used for client care shall be maintained clean and in good repair;
C. all furniture and furnishings must be kept clean and in good repair; and
D. the grounds of the CTC must be maintained in a safe and sanitary condition at all times.
[7.30.13.45 NMAC - N, 10/30/2018]

7.30.13.46 HOUSEKEEPING:
A. The CTC must be kept free from offensive odors and accumulations of dirt, rubbish, dust, and safety hazards.
B. Treatment rooms, waiting areas and other areas of daily usage must be cleaned as needed to maintain a clean and safe environment for the clients.
C. Floors and walls must be constructed of a finish that can be easily cleaned. Floor polishes shall provide a slip resistant finish.
D. Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.
E. Storage areas must be kept free from accumulation of refuse, discarded equipment,

furniture, paper, et cetera.
[7.30.13.46 NMAC - N, 10/30/2018]

7.30.13.47 CUSTODIAL CLOSET(S):
A. Each CTC shall have at least one custodial closet which must be locked and restricted from client access.
B. Each custodial closet shall contain:
(1) a service sink; and
(2) storage for housekeeping supplies and equipment.
C. Each custodial closet must be mechanically vented to the exterior.
D. Custodial closets are hazardous areas and must be provided with one-hour fire separation and one and three-quarter inch solid core doors which are rated at a 20-minute fire protection rating.
[7.30.13.47 NMAC - N, 10/30/2018]

7.30.13.48 HAZARDOUS AREAS:
A. Hazardous areas include the following:
(1) fuel fired equipment rooms;
(2) bulk laundries or laundry rooms with more than 100 sq. ft.;
(3) storage rooms with more than 50 sq. ft. but less than 100 sq. ft. not storing combustibles;
(4) storage rooms with more than 100 sq. ft. storing combustibles;
(5) chemical storage rooms with more than 50 sq. ft.; and
(6) garages, maintenance shops, or maintenance rooms.
B. Hazardous areas on the same floor or abutting a primary means of escape or a sleeping room shall be protected by either:
(1) an enclosure of at least one-hour fire rating with self-closing or automatic closing on smoke detection fire doors having a three-quarter hour rating; or

(2) an automatic fire protection (sprinkler) and separation of hazardous area with self-closing doors or doors with automatic-closing on smoke detection; or
(3) any other hazardous areas shall be enclosed with walls with at least a 20-minute fire rating and doors equivalent to one and three-quarter inch solid bonded wood core, operated by self-closures or automatic closing on smoke detection.
C. All boiler, furnace or fuel fired water heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one hour. Doors to these rooms shall be one and three-quarter inch solid core.
[7.30.13.48 NMAC - N, 10/30/2018]

7.30.13.49 FLOORS AND WALLS:
A. Floor and wall areas penetrated by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.
B. Threshold and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts.
[7.30.13.49 NMAC - N, 10/30/2018]

7.30.13.50 EXITS:
A. Each floor of a CTC shall have exits as required by the New Mexico commercial building code and applicable version of the National fire protection association 101.
B. Each exit must be marked by illuminated exit signs having letters at least six inches high whose principle strokes are at least three quarters inch wide.
C. Illuminated exit signs must be maintained in operable condition at all times.
D. Exit ways must be kept free from obstructions at all times.
[7.30.13.50 NMAC - N, 10/30/2018]

7.30.13.51 CORRIDORS:

A. Minimum corridor width shall be five feet except work corridors less than six feet in length may be four feet in width.

B. For facilities contained within existing commercial or residential buildings, less stringent corridor widths may be allowed if not in conflict with building or fire codes. A waiver or variance may be requested but must be approved by the licensing authority prior to occupying the licensed part of the building.

[7.30.13.51 NMAC - N, 10/30/2018]

7.30.13.52 STAFF STATION:

A. Each client care area in the residential unit shall have a staff station located to provide visual or virtual monitoring of all resident room corridors and access to secured access to outdoor area, equipped with access to residential clients' records, a desk or work counter, a cleaning area with a sink with hot and cold running water, operational telephone, and emergency call system.

B. Locked storage area for drugs or pharmacy grade, locked medication cart.

C. Access to a biohazard disposal unit for needles, and other "sharps," and breakable items.

D. A reliable monitored emergency call system shall be provided for staff use in the event of an emergency.

E. If a kitchen is not open at all times to residents, a nourishment station with sink, hot and cold running water, refrigerator, and storage for serving residents between meal nourishment shall be provided.

F. View of fire alarm control panel, generator panel (if any), and any other life safety code components.

[7.30.13.52 NMAC - N, 10/30/2018]

7.30.13.53 SECURED ENVIRONMENT/OUTDOOR AREA:

A. The CTC shall provide a secure environment for client safety. A secured environment

is a CTC and grounds that have secured or monitored exits. A secured environment for facilities that offer residential services may include but is not limited to: double alarm systems; gates connected to the fire alarm; or tab alarms for residents at risk for elopement. Locked areas shall have an access code or key which CTC employees shall have on their person or available at all times in accordance with the Life Safety Code, NPFA 101, 2012 or subsequent updates. For a CTC located within an existing licensed facility, a request for waiver may be submitted to the licensing authority containing an alternate plan for providing security for clients, provided that health, safety or welfare of the clients or staff would not be adversely affected.

B. In addition to the interior common areas required by this rule, a CTC providing residential services shall provide an outdoor secured environment independently accessible to residents for their year-round use.

(1) Fencing or other enclosures, not less than six feet high, shall protect the safety, security and privacy of the residents and have emergency egress gates that are connected to the emergency call system.

(2) Outdoor area shall not provide access to contact with the public.

[7.30.13.53 NMAC - N, 10/30/2018]

7.30.13.54 ASSESSMENT ROOMS:

A. general purpose assessment rooms shall meet the following requirements:

B. minimum floor area of 80 square feet, excluding vestibules, toilets, and closets;

C. room arrangement shall permit at least two feet - eight inch clearance around furniture items used for exam or assessment;

D. a lavatory or sink for hand washing.

[7.30.13.54 NMAC - N, 10/30/2018]

7.30.13.55 THERAPY/TREATMENT ROOMS:

A. Shall have a minimum floor area of 120 square feet, excluding vestibule, toilet, and closets.

B. All walls shall be constructed to a minimum length of 10 feet.

[7.30.13.55 NMAC - N, 10/30/2018]

7.30.13.56 ACTIVITY OR MULTIPURPOSE ROOM: The CTC shall provide a minimum of 250 square feet for common living area, dining and social spaces, or 40 square feet per resident, whichever is greater.

A. The CTC shall have a living or multipurpose room for the use of the residents. The furnishings shall be well constructed, comfortable and in good repair.

B. The activity or multi-purpose room may be used as a dining area.

C. The activity room or multipurpose rooms shall be provided with supplies to reasonably meet the interests and needs of the residents.

D. Each activity room shall have a window area of at least one tenth of the floor area with a minimum of at least 10 square feet.

E. A dining area shall be provided for meals. Facilities shall have tables and chairs in the dining area to accommodate the total number of residents in one sitting. All seating arrangements during meals shall allow clear access to the exits. Lunch times for adults and youth must be separate if there is only one lunch room.

[7.30.13.56 NMAC - N, 10/30/2018]

7.30.13.57 MEETING ROOM: The CTC shall have adequate meeting rooms and office space for use by staff, the interdisciplinary care team and client and family visits. Other rooms may serve as meeting rooms, provided resident confidentiality is maintained. Meeting and treatment rooms must not hold both adults and youth at the same time.

[7.30.13.57 NMAC - N, 10/30/2018]

7.30.13.58 RESIDENT ROOMS: The regulations in Section 7.30.13.58 NMAC apply to those facilities providing a residential treatment program.

A. A CTC providing residential treatment shall not exceed the bed capacity approved by the licensing authority.

B. Resident rooms may be private or semi-private or dormitory style depending on assessed, resident acuity and need. Resident rooms must be separated by gender.

C. Facilities serving youth and adults must locate youth resident rooms and restrooms in a unit or wing that is physically separated from the adult facilities.

(1) Private rooms shall have a minimum of 100 square feet of floor area. The closet and locker area shall not be counted as part of the available floor space.

(2) Semi-private rooms shall have a minimum of 80 square feet of floor area for each resident and shall be furnished in such a manner that the room is not crowded and passage out of the room is not obstructed.

(3) A separate closet, bed (at least 36 inch wide), chair, towel bar, and non-metal trash receptacle, for each resident shall be provided.

(4) The beds shall be spaced at least three feet apart. Bunk beds, roll away beds, stacked beds, hide-a-beds, or beds with springs, cranks, rails or wheels, are not allowed.

D. Each resident room shall have a window to the outside. The area of the outdoor window shall be at least one tenth of the floor area of the room and allow for emergency egress. Windows may be textured or obscured glass to provide privacy without the use of any window coverings.

E. Resident rooms shall not be less than seven feet in any horizontal direction.

F. There must be no through traffic in resident rooms. Resident rooms must connect directly

to hallway or other internal common areas of the facility.
[7.30.13.58 NMAC - N, 10/30/2018]

7.30.13.59 TOILETS, LAVATORIES AND BATHING FACILITIES:

A. General Requirements:

(1) All fixtures and plumbing must be installed in accordance with current state and local plumbing codes.

(2) All toilets must be enclosed and vented.

(3) All toilet rooms must be provided with a lavatory for hand washing.

(4) All toilets must be kept supplied with toilet paper.

(5) All lavatories for hand washing must be kept supplied with disposable towels for hand drying or provided with mechanical blower.

(6) The number of and location of toilets, lavatories and bathing facilities shall be in accordance with International Building Code (IBC) requirements. Toilets for public use shall be located adjacent to the waiting area. Such factors as extent of services provided and size of CTC will also dictate requirements.

(7) Facilities serving youth must provide separate toilet and shower facilities for adults and youth.

B. Residential component: Separate facilities shall be provided for male and female patients. Toilet and bathing facilities shall be located appropriately to meet the needs of residents.

(1) Facilities serving youth and adults must locate youth resident rooms and restrooms in a unit or wing that is physically separated from the adult facilities.

(2) A minimum of one toilet, one lavatory and one bathing unit (tub, shower, or combo unit) shall be provided for every eight residents or fraction thereof.

(3) Toilets to

be flush meter type (no tank).

(4) Mirrors cannot be glass or polished metal. A polycarbonate mirror, fully secured and flat mounted to the wall is required.

(5) Individual shower stalls and dressing areas shall be provided. The shower head shall be recessed or have a smooth curve from which items cannot be hung.

(6) There shall not be any overhead rods, fixtures or privacy stall supports or protrusions capable of carrying more than a 30-pound load.

C. Staff restroom: The CTC shall provide a separate staff toilet including, lavatory and shower, near staff station.
[7.30.13.59 NMAC - N, 10/30/2018]

7.30.13.60 COLLECTION/DRAW/LAB AREA: Facilities shall be provided to support laboratory procedures, if provided. Minimum facilities provided on-site shall include space for the following:

A. A urine collection room equipped with a toilet and hand washing sink.

B. Blood collection facilities with space for a chair, work counter, and lavatory.

C. Each CTC shall have accommodations for storage and refrigeration of blood, urine and other specimens in a dedicated specimen refrigerator.
[7.30.13.60 NMAC - N, 10/30/2018]

7.30.13.61 NUTRITION: A CTC offering a residential treatment program shall provide planned and nutritionally balanced meals from the basic food groups in accordance with the "recommended daily dietary allowance" of the American dietetic association, the food and nutrition board of the national research council, or the national academy of sciences. Menus must be approved by a licensed nutritionist. Meals shall meet the nutritional needs of the residents in accordance with the current USDA dietary guidelines for Americans. Vending machines shall not be considered a source of snacks.

A. Dietary services. The CTC will develop and implement written policies and procedures that are maintained on the premises. All CTC food service operations for residents shall comply with current federal and state laws and rules concerning food service and shall include:

- (1) at least three nutritious meals per day shall be served;
- (2) no more than 14 hours may elapse between the end of an evening meal and the beginning of a morning meal;
- (3) therapeutic diets shall be provided when ordered by the physician;
- (4) under no circumstances may food be withheld for disciplinary reasons;
- (5) each CTC shall have seating capacity to accommodate the licensed capacity and be able to feed adult and youth clients separately, although clients may eat or be served in shifts during daily operations;
- (6) nutritional snacks shall be available to each client; and
- (7) weekly menus shall be posted in the dining area.

[7.30.13.61 NMAC - N, 10/30/2018]

7.30.13.62 FOOD SERVICE:

Requirements of Section 7.30.13.62 NMAC apply to facilities providing a residential treatment program.

A. The CTC shall have either contracted food preparation or prepare food on site.

B. A CTC that contracts food preparation shall have a dietary or a kitchen area adequate to meet food service needs and arranged and equipped for the refrigeration, storage, preparation, and serving of food, dish and utensil cleaning and refuse storage and removal.

C. Dietary areas consisting of a food warming and refrigeration area shall comply with the local health or food handling codes. Food preparation space shall be arranged for the separation of

functions and shall be located to permit efficient services to residents and shall not be used for non-dietary functions.

D. A CTC that provides onsite food preparation shall comply with the New Mexico environment department food preparation regulations.

E. A CTC with a kitchen area, whether used for on-site food preparation or not, must adhere to the following requirements:

- (1) limit traffic incidental to the receiving, preparation and serving of food and drink;
- (2) toilet facilities may not open directly into the kitchen;
- (3) food day-storage space shall be provided adjacent to the kitchen and shall be ventilated to the outside;
- (4) a separate hand washing sink with soap dispenser, single service towel dispenser, or other approved hand drying facility shall be located in the kitchen;
- (5) a separate dishwashing area, preferably a separate room, with mechanical ventilation shall be provided;
- (6) at least a three-compartment sink shall be provided for washing, rinsing and sanitizing utensils, with adequate drain boards, at each end. In addition, a single-compartment sink located adjacent to the soiled utensil drain board shall be available for prewashing and liquid waste disposal. The size of each sink compartment shall be adequate to permit immersion of at least fifty percent of the largest utensil used. In lieu of the additional sink for prewashing, a well-type garbage disposal with overhead spray wash may be provided.
- (7) mechanical dishwashers and utensil washers, where provided, shall meet the requirements of the current approved list from the national sanitation foundation or equivalent with approval of the department;

(8) temperature gauges shall be located in the wash compartment of all mechanical dishwashers and in the rinse water line at the machine of a spray-type mechanical dishwasher or in the rinse water tank of an immersion-type dishwasher. The temperature gauges shall be readily visible, fast-acting and accurate to plus or minus two degrees *fahrenheit* or one degree *celsius*;

(9) approved automatic fire extinguishing equipment shall be provided in hoods and attached ducts above all food cooking equipment;

(10) the walls shall be of plaster or equivalent material with smooth, light-colored, nonabsorbent, and washable surface;

(11) the ceiling shall be of plaster or equivalent material with smooth, light-colored, nonabsorbent, washable, and seamless surface;

(12) the floors of all rooms, except the eating areas of dining rooms, in which food or drink is stored, prepared, or served, or in which utensils are washed, shall be of such construction as to be non-absorbent and easily cleaned;

(13) an exterior door from a food preparation area shall be effectively screened. Screen doors shall be self-closing;

(14) all rooms in which food or drink is stored or prepared or in which utensils are washed shall be well lighted;

(15) rooms subject to sewage or wastewater backflow or to condensation or leakage from overhead water or waste lines shall not be used for storage of food preparation unless provided with acceptable protection from such contamination.

(8) temperature gauges shall be located in the wash compartment of all mechanical dishwashers and in the rinse water line at the machine of a spray-type mechanical dishwasher or in the rinse water tank of an immersion-type dishwasher. The temperature gauges shall be readily visible, fast-acting and accurate to plus or minus two degrees *fahrenheit* or one degree *celsius*;

(9) approved automatic fire extinguishing equipment shall be provided in hoods and attached ducts above all food cooking equipment;

(10) the walls shall be of plaster or equivalent material with smooth, light-colored, nonabsorbent, and washable surface;

(11) the ceiling shall be of plaster or equivalent material with smooth, light-colored, nonabsorbent, washable, and seamless surface;

(12) the floors of all rooms, except the eating areas of dining rooms, in which food or drink is stored, prepared, or served, or in which utensils are washed, shall be of such construction as to be non-absorbent and easily cleaned;

(13) an exterior door from a food preparation area shall be effectively screened. Screen doors shall be self-closing;

(14) all rooms in which food or drink is stored or prepared or in which utensils are washed shall be well lighted;

(15) rooms subject to sewage or wastewater backflow or to condensation or leakage from overhead water or waste lines shall not be used for storage of food preparation unless provided with acceptable protection from such contamination.

[7.30.13.62 NMAC - N, 10/30/2018]

7.30.13.63 LAUNDRY SERVICES:

A. General requirements. The CTC shall provide laundry services, either on the premises or through a commercial laundry and linen service.

(1) On-site laundry facilities shall be located in areas separate from the resident units and shall be provided with necessary washing and drying equipment.

(2) Soiled laundry shall be kept separate from clean laundry, unless the laundry facility is provided for resident use only.

(3) Staff shall handle, store, process and transport linens with care to prevent the spread of infectious and communicable disease.

(4) Soiled laundry shall not be stored in the kitchen or dining areas. The building design and layout shall ensure the separation of laundry room from kitchen and dining areas. An exterior route to the laundry room is not an acceptable alternative, unless it is completely enclosed.

(5) All linens shall be changed as needed and at least weekly or when a new resident is to occupy the bed.

(6) The mattress pad, blankets and bedspread shall be laundered as needed and when a new resident is to occupy the bed.

(7) Bath linens consisting of hand towel, bath towel and washcloth shall be changed as needed and at least weekly.

(8) There shall be a clean, dry, well-ventilated storage area provided for clean linen.

(9) CTC laundry supplies and cleaning supplies shall not be kept in the same storage areas used for the storage of foods and clean storage and shall be kept in a secured room or cabinet.

(10) CTC shall have a small washer and dryer for immediate unit needs and to wash clients' clothes. These washing and drying units shall be equipped to sanitize clothes as a preventive measure of infection control.

(11) Residents may do their own laundry, if it is their preference and they are capable of doing so.

[7.30.13.63 NMAC - N, 10/30/2018]

7.30.13.64 WATER:

A. A CTC licensed pursuant to these regulations must be provided with an adequate supply of water that is of a safe and sanitary quality suitable for domestic use.

B. If the water supply is not obtained from an approved public system, the private water system must be inspected, tested, and approved by the New Mexico environment department prior to licensure. It is the CTC's responsibility to ensure that subsequent periodic testing or inspection of such private water systems be made at intervals prescribed by the New Mexico environment department or recognized authority.

C. Hot and cold running water under pressure must be distributed at sufficient pressure to operate all fixtures and equipment during maximum demand periods.

D. Back flow preventers (vacuum breakers) must be installed on hose bibs, laboratory sinks, service sinks, and on all other water fixtures to which hoses or tubing can be attached.

E. Water distribution systems are arranged to provide hot water at each hot water outlet at all times.

F. Hot water to hand washing facilities must not exceed 120 degrees fahrenheit.

[7.30.13.64 NMAC - N, 10/30/2018]

7.30.13.65 SEWAGE AND WASTE DISPOSAL:

A. All sewage and liquid wastes must be disposed of into a municipal sewage system where such facilities are available.

B. Where a municipal sewage system is not available, the system used must be inspected and approved by the New Mexico environment department or recognized local authority.

C. Where municipal or community garbage collection and disposal service are not available, the method of collection and disposal of solid wastes generated by the CTC

must be inspected and approved by the New Mexico environment department or recognized local authority.

D. All garbage and refuse receptacles must be durable, have tight fitting lids, must be insect and rodent proof, washable, leak proof and constructed of materials which will not absorb liquids. Receptacles must be kept closed and clean.

[7.30.13.65 NMAC - N, 10/30/2018]

7.30.13.66 ELECTRICAL STANDARDS:

A. All electrical installation and equipment must comply with all current state and local codes.

B. Circuit breakers or fused switches that provide electrical disconnection and over current protection shall be:

(1) enclosed or guarded to provide a dead front assembly;

(2) readily accessible for use and maintenance;

(3) set apart from traffic lanes;

(4) located in a dry, ventilated space, free of corrosive fumes or gases;

(5) able to operate properly in all temperature conditions;

(6) panel boards servicing lighting and appliance circuits shall be on the same floor and in the same facility area as the circuits they serve; and

(7) each panel board will be marked showing the services.

C. The use of jumpers or devices to bypass circuit breakers or fused switches is prohibited.

D. Light switches and electrical devices in the residential unit shall be secured with tamper resistant screws.

[7.30.13.66 NMAC - N, 10/30/2018]

7.30.13.67 LIGHTING:

A. All spaces occupied by people, machinery, or equipment within buildings, approaches to

buildings, and parking lots shall have lighting.

B. Lighting will be sufficient to make all parts of the area clearly visible.

C. All lighting fixtures must be shielded.

D. Lighting fixtures must be selected and located with the comfort and convenience of the staff and clients in mind.

E. Lighting fixtures in the residential unit shall be recessed, tamperproof or protective translucent cover.

[7.30.13.67 NMAC - N, 10/30/2018]

7.30.13.68 ELECTRICAL CORDS AND RECEPTACLES:

A. Electrical cords and extension cords shall:

- (1) be U/L approved;
- (2) be replaced as soon as they show wear;
- (3) be plugged into an electrical receptacle within the room where used;
- (4) not be used as a general wiring method; and
- (5) not be used in series.

B. Electrical receptacles shall:

- (1) Be duplex-grounded type electrical receptacles (convenience outlets) and installed in all areas in sufficient quantities for tasks to be performed as needed.
- (2) Be a ground fault circuit interrupter if located within six feet of a water source.

C. The use of multiple sockets (gang plugs) in electrical receptacles is strictly prohibited.

[7.30.13.68 NMAC - N, 10/30/2018]

7.30.13.69 EMERGENCY POWER & LIGHTING:

Emergency electrical service with an independent power source which covers lighting at attendant stations, exit and corridor lights, boiler room, and fire alarm systems shall be provided.

A. The service may be battery operated if effective for at

least four hours.

B. Facilities shall have emergency lighting with a minimum of two bulbs to light exit passageways.

C. Independent power source shall be in an exterior area near the exits and activate automatically upon disruption of electrical service.

[7.30.13.69 NMAC - N, 10/30/2018]

7.30.13.70 FIRE SAFETY COMPLIANCE:

All current applicable requirements of state and local codes for fire prevention and safety must be met by the CTC.

[7.30.13.70 NMAC - N, 10/30/2018]

7.30.13.71 FIRE CLEARANCE AND INSPECTIONS:

Each CTC must request from the fire authority having jurisdiction an annual fire inspection. If the policy of the fire authority having jurisdiction does not provide for annual inspection of the CTC, the CTC must document the date the request was made and to whom. If the fire authorities do make annual inspections; a copy of the latest inspection must be kept on file in the CTC.

[7.30.13.71 NMAC - N, 10/30/2018]

7.30.13.72 AUTOMATIC FIRE PROTECTION (SPRINKLER) SYSTEM:

Facilities with residential services shall have an automatic fire protection (sprinkler) system. The system shall be in accordance with NFPA 13 or NFPA 13D or its subsequent replacement as applicable. Sprinkler heads in the residential unit shall be of the protective type, either vandal proof or tamper resistant. Sprinkler systems for facilities without residential services must be in compliance with current state building code requirements regarding a sprinkler system.

[7.30.13.72 NMAC - N, 10/30/2018]

7.30.13.73 FIRE ALARMS, SMOKE DETECTORS AND

OTHER EQUIPMENT: The system shall be in accordance with NFPA 13 or NFPA 13D or its subsequent replacement as applicable.

A. Facilities shall have a manual fire alarm system. The manual fire alarm shall be inspected and approved in writing by the fire authority with jurisdiction.

B. Approved smoke detectors shall be installed on each floor that when activated provides an alarm which is audible in all sleeping areas. Areas of assembly, such as the dining, living or activity room(s) must also be provided with smoke detectors.

(1) Detectors shall be powered by the house electrical service and have battery backup.

(2) Construction of new facilities or facilities remodeling or replacing existing smoke detectors shall provide detectors in common living areas and in each sleeping room.

(3) Smoke detectors shall be installed in corridors at no more than 30 feet spacing.

(4) Heat detectors shall be installed in all kitchens and also powered by the house electrical service.

[7.30.13.73 NMAC - N, 10/30/2018]

7.30.13.74 FIRE EXTINGUISHERS:

Fire extinguisher(s) must be located in the CTC, as approved by the state fire marshal or the fire prevention authority with jurisdiction.

A. Facilities must as a minimum have two 2A10BC fire extinguishers:

(1) one extinguisher located in the kitchen or food preparation area;

(2) one extinguisher centrally located in the CTC;

(3) all fire extinguishers shall be inspected yearly, recharged as needed and tagged noting the date of the inspection;

(4) The

maximum distance between fire extinguishers shall be 50 feet.

B. Fire extinguishers, alarm systems, automatic detection equipment and other firefighting equipment shall be properly maintained and inspected as recommended by the manufacturer, state fire marshal, or the local fire authority.

[7.30.13.74 NMAC - N, 10/30/2018]

7.30.13.75 STAFF FIRE AND SAFETY TRAINING:

A. All staff of the CTC must know the location of and instructed in proper use of fire extinguishers and other procedures to be observed in case of fire or other emergencies. The CTC should request the fire authority having jurisdiction to give periodic instruction in fire prevention and techniques of evacuation.

B. CTC staff must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, faulty equipment, blocked exits or exit ways, and any other condition which could cause burns, falls, or other personal injury to the patients or staff.

C. Fire and evacuation drills: The CTC must conduct at least one fire and evacuation drill for each work shift for each quarter. When drills are conducted between 9:00 pm and 6:00 am, a coded announcement shall be permitted for use instead of audible alarms. A log must be maintained by the CTC showing the date, time, number of staff participating and outlining any problems noted in the conduct of the drill.

[7.30.13.75 NMAC - N, 10/30/2018]

7.30.13.76 EVACUATION

PLAN: Each CTC must have a fire evacuation plan conspicuously posted in each separate area of the building showing routes of evacuation in case of fire or other emergencies.

[7.30.13.76 NMAC - N, 10/30/2018]

7.30.13.77 HEATING, VENTILATION, AND AIR-CONDITIONING:

A. Heating, air-conditioning, piping, boilers, and ventilation equipment must be furnished, installed and maintained to meet all requirements of current state and local mechanical, electrical, and construction codes.

B. The heating, ventilation and air-conditioning system must be able to maintain interior temperatures in all rooms used by clients, staff or visitors with interior temperatures between 65 degrees *fahrenheit* and 78 degrees *fahrenheit* year-round.

C. The use of non-vented heaters, open flame heaters or portable heaters is prohibited.

D. An ample supply of outside air must be provided in all spaces where fuel fired boilers, furnaces, or heaters are located to assure proper combustion.

E. All fuel fired boilers, furnaces, or heaters must be connected to an approved venting system to take the products of combustion directly to the outside air.

F. A CTC must be adequately ventilated at all times to provide fresh air and the control of unpleasant odors.

G. All gas-fired heating equipment must be provided with a one hundred percent automatic cutoff control valve in event of pilot failure.

H. The CTC must be provided with a system for maintaining clients and staff's comfort during periods of hot weather, evaporative cooling is not allowed.

I. All boiler, furnace or heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one hour. The door must be self-closing with three-quarter hour fire resistance.

J. Fireplace or wood burning stoves are prohibited.

K. The ceiling and air distribution devices (supply & return, etc.) in the residential component shall be a tamper resistant type.

[7.30.13.77 NMAC - N, 10/30/2018]

7.30.13.78 WATER HEATERS:

A. Must be able to supply hot water to all hot water taps within the CTC at full pressure during peak demand periods and maintain a maximum temperature of 120 degrees *fahrenheit*.

B. Fuel fired hot water heaters must be enclosed and separated from other parts of the building by construction as required by current state and local building codes.

C. All water heaters must be equipped with a pressure relief valve (pop-off valve).

[7.30.13.78 NMAC - N, 10/30/2018]

7.30.13.79 ADDITIONAL REQUIREMENTS FOR FACILITIES SERVING YOUTH:

All requirements in the above rules apply to all facilities. For facilities serving youth, the additional requirements of this section must also be met.

A. Physical environment for general building requirements: Facilities serving adults and youth must locate youth resident rooms and restrooms in a unit or wing that is separated by sight and sound barriers from the adult facilities.

B. Enforcement involving suspension of license without prior hearing: Any CTC that allows any person, subject to all applicable statutes and regulations, to work at the CTC if that person is listed on the CYFD unreasonable risk background check and related regulations, as amended, may be subject to immediate suspension of its license without prior hearing.

C. Reporting of incidents: All facilities licensed under these regulations, must comply with all incident intake, processing, training and reporting requirements under all applicable NM Children's Code, Section 32A-1-1 NMSA 1978, Children's Mental Health and Developmental Disabilities Act, Section 32A-6A-1 NMSA 1978, Section 7.20.11 and Section 7.20.12 NMAC.

D. Policies And Procedures: The CTC shall establish written policies and procedures that are reviewed annually and approved by the governing body, which govern the CTC’s operation. The administrator shall ensure that these policies and procedures are adopted, administered and enforced to provide quality services in a safe environment. At a minimum, the CTC’s written policies and procedures shall include how the CTC intends to comply with all requirements of these regulations and address:

- (1) immediate reporting of suspected child abuse, neglect or exploitation, pursuant to the NM Children’s Code and these licensing regulations;
- (2) actions to be taken in case of accidents or emergencies involving a youth, including death;
- (3) immediate personnel actions to be taken by the CTC if child abuse or neglect allegations are made involving a direct service staff;
- (4) confidentiality of youth’ records;
- (5) management of a youth who is a danger to him/herself or others or presents a likelihood of serious harm to him/herself or others. The CTC procedures must specify that immediate actions be taken to prevent such harm. At a minimum, the policies and procedures require that the following actions be taken and documented in the youth’s file:
 - (a) all appropriate actions to protect the health and safety of other youth, clients and staff who are endangered;
 - (b) all appropriate efforts to manage the youth’s behavior prior to proposing emergency discharge;
- (6) Clinically appropriate and legally permissible methods of youth behavior management and discipline.
- (7) The CTC shall prohibit in policy and practice the following:

- (a) degrading punishment;
- (b) corporal or other physical punishment;
- (c) group punishment for one client’s behavior;
- (d) deprivation of an client’s rights and needs (e.g., food, phone contacts, etc.) when not based on documented clinical rationale;
- (e) aversive stimuli used in behavior modification;
- (f) punitive work assignments;
- (g) isolation or seclusion;
- (h) harassment; and
- (i) chemical or mechanical restraints.

(8) For those CTCs that serve mixed age occupants, the CTC shall establish policies and procedures to ensure the health and safety of all residents.
[7.30.13.79 NMAC - N, 10/30/2018]

7.30.13.80 RISK ASSESSMENT: Use of physical restraint must be consistent with federal and state laws and regulations and must include the following:

- A.** Physical restraints of youth are implemented only by staff who have been trained and certified by a state recognized body in the prevention and use of physical restraint. This training emphasizes de-escalation techniques and alternatives to physical contact with clients as a means of managing behavior. Clients and youth do not participate in the physical restraint of other clients and youth.
- B.** Youth treatment plans document the use of physical restraints and include: consideration of the client’s medical condition(s); the role of the client’s history of trauma in his/her behavioral patterns; the treatment team’s solicitation and consideration of specific suggestions from the client regarding prevention of future physical interventions.

C. Physical restraints orders for youth are issued by a restraint clinician within one hour of initiation of physical restraint and include documented clinical justification for the use of physical restraint.

D. If the youth has a treatment team physician or advanced practice registered nurse and he or she is available, only he or she can order physical restraint.

E. If physical restraint is ordered by someone other than the youth’s treatment team physician or advanced practice registered nurse, the restraint clinician will consult with the youth’s treatment team physician or advanced practice registered nurse as soon as possible and inform him or her of the situation requiring the youth to be restrained and document in the youth’s record the date and time the treatment team physician or advanced practice registered nurse was consulted and the information imparted.

F. The restraint clinician must order the least restrictive emergency safety intervention that is most likely to be effective in resolving the situation.

G. If the order for physical restraint is verbal, the verbal order must be received by a restraint clinician or a New Mexico licensed registered nurse (RN) or practical nurse (LPN). The restraint clinician must verify the verbal order in a signed, written form placed in the youth’s record within 24 hours after the order is issued.

H. A restraint clinician’s order must be obtained by a restraint clinician or New Mexico licensed RN or LPN prior to or while the physical restraint is being initiated by staff, or immediately after the situation ends.

I. Each order for physical restraint must be documented in the youth’s record and will include:

- (1) the name of the restraint clinician ordering the physical restraint;
- (2) the date and time the order was obtained;
- (3) the

emergency safety intervention ordered, including the length of time;

(4) the time the emergency safety intervention actually began and ended;

(5) the time and results of any one-hour assessment(s) required; and

(6) the emergency safety situation that required the client to be restrained; and

(7) the name, title, and credentials of staff involved in the emergency safety intervention.

J. The CTC will notify the parent(s) or legal guardian(s) that physical restraint has been ordered as soon as possible after the initiation of each emergency safety intervention. This will be documented in the client's record, including the date and time of notification, the name of the staff person providing the notification, and who was notified.

K. After an incident of restraint, the professionals involved in the incident shall conduct a debriefing with the client to discuss the event with the intent of preventing future incidents. Within five days of an incident of restraint, the treatment team must meet to review the incident and revise plan of treatment if appropriate.

[7.30.13.80 NMAC - N, 10/30/2018]

7.30.13.81 CLIENT

RIGHTS: All licensed facilities shall understand, protect and respect the rights of all youth demonstrating substantial compliance with all applicable New Mexico Children's Code, Section 32A-1-1 NMSA 1978, including the NM Children's Mental Health and Developmental Disabilities Act, Section 32A-6A-1 NMSA 1978.

[7.30.13.81 NMAC - N, 10/30/2018]

7.30.13.82 CLIENT

CLINICAL RECORD:

The client clinical records maintained by a crisis triage center in a paper-based or electronic system shall document the degree and intensity of the treatment provided to clients who are furnished services by the

CTC. A client's clinical record shall contain at a minimum all required NM Children's Code documentation defined in Subsection A through Subsection O of Section 32A-6A-10 NMSA 1978 associated with the use of any emergency interventions such as physical restraint.

[7.30.13.82 NMAC - N, 10/30/2018]

7.30.13.83 STAFFING REQUIREMENTS: Other staff requirements:

A. All CYFD background check requirements governing criminal records clearances must remain in effect while a program is accredited.

B. When a prospective employee that will work with or have access to youth has not lived in the United States continuously for the five years prior to hire, the CTC must obtain the equivalent of a criminal records and background clearance from any country in which the prospective employee has lived within the last five years, for a period longer than one year.

C. If the CTC receives reliable evidence that indicates that an employee or prospective employee poses an unreasonable risk, as defined or pursuant to Subsection W of Section 8.8.3.7 NMAC, the CTC may not hire the prospective employee or retain the employee.

[7.30.13.83 NMAC - N, 10/30/2018]

7.30.13.84 PERSONNEL

RECORDS: Each CTC licensed pursuant to these regulations intending to work with youth must maintain a complete record on file for each staff member or volunteer including:

A. Completed CYFD criminal records and background check, including the FBI-approved electronic fingerprint for each employee that serves as direct service staff working with youth including licensed and certified staff. (supervisors, physicians, nurses, therapists, client care workers, coordinators, or other agency personnel who work in immediate direct unsupervised contact with

youth.) The agency must have received the background clearance from the CYFD background check unit prior to the employee's direct, unsupervised contact with youth.

B. The date the employee was first employed and dates of transfers or changes in position.

C. Documentation that of a minimum of three references were checked.

D. A clearance letter from CYFD stating the applicant's background check has been conducted with negative results or a signed statement by the administrator, director, or operator attesting to direct supervision of an uncleared employee by a cleared employee until official clearance is received.

E. Documentation that each uncleared employee is identified on the staff schedule.

[7.30.13.84 NMAC - N, 10/30/2018]

7.30.13.85 STAFF

TRAINING: At least 12 hours of on-going training shall be provided to staff that provides direct care at least annually; the training and proof of competency shall include at a minimum: NM Children's Mental Health and Developmental Disabilities Act Section 32A-6A-1 et. seq., NMSA 1978.

[7.30.13.85 NMAC - N, 7.30.13.85 10/30/2018]

HISTORY of 7.30.13 NMAC: [RESERVED]

**HUMAN SERVICES
DIVISION
OFFICE OF THE INSPECTOR
GENERAL**

**TITLE 8 SOCIAL
SERVICES
CHAPTER 1 SOCIAL
SERVICES GENERAL
PROVISIONS
PART 2 GENERAL
OPERATING PROCEDURE FOR
THE OFFICE OF INSPECTOR
GENERAL**

8.1.2.1 ISSUING

AGENCY: New Mexico Human Services Department (HSD).

[8.1.2.1 NMAC - N, 11/01/2018]

8.1.2.2 SCOPE: The rule applies to the general public.

[8.1.2.2 NMAC - N, 11/01/2018]

8.1.2.3 STATUTORY AUTHORITY:

A. Sections 27-1-2 and 27-1-3 NMSA 1978 provide for the department to “adopt, amend and repeal bylaws, rules and regulations.” It also provides for administration of public assistance programs.

B. The Office of Inspector General (OIG) of the Human Services Department (HSD) was created by the secretary under authority granted by Paragraph (3) of Subsection B of Section 9-8-6 NMSA 1978.

[8.1.2.3 NMAC - N, 11/01/2018]

8.1.2.4 DURATION: Permanent.

[8.1.2.4 NMAC - N, 11/01/2018]

8.1.2.5 EFFECTIVE DATE: November 1, 2018, unless a later date is cited at the end of a section.

[8.1.2.5 NMAC - N, 11/01/2018]

8.1.2.6 OBJECTIVE: The objective of these regulations is to provide general operating policy for the Office of Inspector General (OIG).

[8.1.2.6 NMAC - N, 11/01/2018]

8.1.2.7 DEFINITIONS:

The following words and terms, when used in this section, shall have the following meanings, unless the text clearly indicates otherwise:

A. “Abuse” means to make excessive or improper use of a thing, or to employ it in a manner contrary to the material or legal rules for its use; to make an extravagant or excessive use, as to abuse one’s authority. Abuse may also occur through expressive carelessness in following written instructions or policy or in failing to take proper

action that results in improper payments for public assistance, food benefits, vendor payments, or claims processing. Abuse through expressive carelessness may occur in eligibility determination, supervision review, data processing, claims processing, or program interpretation.

B. “Fraud” is an intentional misappropriation, deception or misrepresentation made by a person(s) or entities with knowledge that the deception could result in some unauthorized benefit to the person(s), entity, other entity or some other person(s). The term includes any act that constitutes fraud under applicable federal or state laws, regulations, or rules.

C. “Waste” means not receiving reasonable value for money in connection with any government funded activities due to an inappropriate act or omission by person(s) or entities with control over or access to government resources (e.g., executive, judicial or legislative branch employees, grantees or other recipients). Waste goes beyond fraud and abuse and does not involve a violation of law. Waste relates primarily to mismanagement, inappropriate actions and inadequate oversight.

[8.1.2.7 NMAC - N, 11/01/2018]

8.1.2.8 MISSION STATEMENT: [RESERVED]

[8.1.2.8 NMAC - N, 11/01/2018]

8.1.2.9 RESPONSIBILITIES: Generally, the OIG, is responsible for conducting independent audits, reviews, and investigations of HSD programs and operations, while detecting and preventing fraud, waste, and abuse. Through audits and reviews, the OIG promotes accountability, efficiency, economy, and integrity through research and analysis, and by providing recommendations for improvement to HSD’s secretary, leadership and management. The OIG conducts investigations into public assistance, i.e. medicaid, supplemental nutrition assistance program (SNAP), temporary

assistance for needy families (TANF), etc., fraud, and HSD contractor and internal employee fraud. If potential fraud is identified, the OIG, when appropriate, will pursue prosecutive remedies and, in coordination with HSD, administrative remedies. Nothing in this section shall prohibit law enforcement agencies from pursuing claims for alleged violations of criminal conduct or other governmental entities from seeking all rights and remedies as permitted by law and regulations.

[8.1.2.9 NMAC - N, 11/01/2018]

8.1.2.10 Authority: In conjunction with federal and state law, rules and regulations that apply to HSD programs, the OIG is authorized:

A. To audit, review, inspect, evaluate, and investigate activities, records, electronic media, and individuals affiliated with contracts and procurements undertaken by HSD and any other official act or function of HSD.

B. To have access to all records, reports, audits, reviews, documents, papers, electronic media, recommendations, or other material available to the individual or entity which relate to HSD’s programs and operations with respect to which the OIG has responsibility.

C. To conduct criminal, civil, and administrative investigations.

D. To engage in prevention activities, including but not limited to; review of legislation; review of rules, regulations, policies; procedures, and transactions; training and education.

E. To refer matters for further civil, criminal, and administrative action to appropriate administrative and prosecutorial agencies.

F. To refer matters to other law enforcement agencies, when appropriate.

G. To conduct joint investigations and projects with other oversight or law enforcement agencies.

H. To establish

guidelines and procedures to guide functions and processes conducted by the OIG.

I. To recoup the cost of investigations from nongovernmental entities as permitted by law.

J. To administer to or take from any person an oath, affirmation, affidavit or sworn statement, whenever necessary in the performance of the OIG functions assigned by this code.

K. To request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this code from any federal, state, or local governmental agency or unit thereof.

L. Access to HSD's secretary, leadership and management when necessary for any purpose pertaining to the OIG's responsibilities.

[8.1.2.10 NMAC - N, 11/01/2018]

8.1.2.11 Powers: The OIG is granted the following powers:

A. Access to all records maintained by or available to any governmental entity relating in any way to the OIG's duties and responsibilities.

B. Access to testimony or documents from any individual, firm, or nongovernmental entity relating to the duties and responsibilities of the OIG.

C. Require HSD employees to report to the OIG information regarding fraud, waste, corruption, illegal acts, and abuse.

[8.1.2.11 NMAC - N, 11/01/2018]

8.1.2.12 Confidentiality:

The OIG shall maintain confidentiality of records and, to the extent practicable, the identities of individuals who provide information to the OIG, except as authorized or required by law.

[8.1.2.12 NMAC - N, 11/01/2018]

8.1.2.13 Cooperation: In

accordance with federal and state laws and regulations and, if applicable, collective bargaining agreements, all HSD employees shall cooperate

fully and promptly with requests from the OIG for information and data relating to HSD programs and operations. All HSD employees shall also comply with requests for interviews and briefings and must provide affidavits or sworn statements, if so requested by an employee of the OIG so designated to take affidavits or sworn statements.

The OIG is not required to give advanced notice before conducting audits, reviews or investigations.

When possible, supervisors will be informed in advance if their areas of responsibility that are to be audited.

Because some OIG investigations may involve allegations of criminal misconduct, circumstances will dictate whether, and what type of, notice will be given, if any. HSD employees must not impede or hinder other employees' cooperation with the OIG. In accordance with Act 10-16C-1 through 10-16C-6 NMSA 1978, HSD managers shall prohibit reprisals against employees who cooperate with or disclose information to the OIG or other lawfully appropriate authority. HSD will also take administrative action against employees who take reprisals against employees who have cooperated with the OIG or other lawful appropriate authority to include, but is not limited to, counsel, reprimand, suspension, or termination. 8.1.2.13 NMAC, must be applied to all HSD contracts, replacing "HSD" with "contractor", where applicable.

[8.1.2.13 NMAC - N, 11/01/2018]

HISTORY OF 8.1.2 NMAC:
[RESERVED]

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.102.620, Section 9, effective 11/1/2018.

8.102.620.9 GRANT DETERMINATION:

A. Determining the payment standard: The payment standard shall be determined based

on the eligibility standards and requirements forth in 8.102.500.8 NMAC. The payment standard also includes the special clothing allowance.

B. Determining benefit group income: The benefit group's net countable income considered in the payment determination shall be the sum of:

(1) gross alien sponsor income;

(2) countable earnings after allowable deductions and disregards of benefit group members; and

(3) gross unearned income of benefit group members;

(4) the net income calculation is rounded down removing the cents.

C. Determining the grant: A benefit group whose countable income after allowed deductions and disregards equals or exceeds the standard of need applicable to the benefit group shall not be eligible for payment. The grant shall be a monthly benefit amount determined [using the following methodology:

~~_____ (1) subtract]~~

~~by subtracting the benefit group's net countable income from the payment standard applicable to the benefit group [and~~

~~_____ (2) further subtract the following budgetary adjustment amounts to establish the monthly benefit amount:~~

~~_____ (a)~~

~~one person — \$22~~

~~_____ (b)~~

~~two persons — \$30~~

~~_____ (c)~~

~~three persons — \$38~~

~~_____ (d)~~

~~four persons — \$46~~

~~_____ (e)~~

~~five persons — \$54~~

~~_____ (f)~~

~~six persons — \$62~~

~~_____ (g)~~

~~seven persons — \$69~~

~~_____ (h)~~

~~eight persons — \$79~~

~~_____ (i)~~

for households with nine or more benefit group members, subtract an additional \$8 for each member]. [8.102.620.9 NMAC - Rp 8.102.620.9 NMAC, 07/01/2001; A, 11/15/2007; A, 01/01/2011; A, 07/01/2013; A, 08/01/2015; A, 11/1/2018]

**HUMAN SERVICES
DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.314.6 NMAC, Sections 7, 8, 10, 11, and 14-17, effective 11/1/2018.

8.314.6.7 DEFINITIONS:

A. Authorized annual budget (AAB): The eligible recipient works with his or her consultant to develop an annual budget request which is submitted to the third-party assessor (TPA) for review and approval. The total annual amount of the mi via services and goods includes the frequency, the amount, and the duration of the services and the cost of goods approved by the TPA. Once approved, this is the AAB.

B. Authorized representative: The individual designated to represent and act on the member's behalf. The eligible recipient or authorized representative must provide formal documentation authorizing the named individual or individuals to access the identified case information for a specified purpose and time frame. An authorized representative may be an attorney representing a person or household, a person acting under the authority of a valid power of attorney, a guardian, or any other individual or individuals designated in writing by the eligible recipient. The eligible recipient's authorized representative may be a service provider (depending on what the eligible recipient or court order allows) for the eligible recipient. An authorized representative cannot approve his or her own timesheet. The authorized representative cannot serve as the eligible recipient's consultant.

C. Category of

eligibility (COE): To qualify for medical assistance program (MAP) services, an applicant must meet financial criteria and belong to one of the groups that the New Mexico medical assistance division (MAD) has defined as eligible. An eligible recipient in the mi via program must belong to one of the MAP categories of eligibility (COE) described in 8.314.6.13 NMAC.

D. Centers for medicare and medicaid services (CMS): Federal agency within the United States department of health (DOH) and human services that works in partnership with New Mexico to administer medicaid and MAP services under HSD.

E. Consultant provider: An agency or an individual that provides consultant and support guide services to the eligible recipient that assist the eligible recipient (or the eligible recipient's family, personal representative or the authorized representative, as appropriate) in arranging for, directing and managing mi via services and supports, as well as developing, implementing and monitoring the service and support plan (SSP) and AAB.

F. Eligible recipient: An applicant meeting the financial and medical level of care (LOC) criteria who is approved to receive MAD services through the mi via program.

G. Employer of record (EOR): The employer of record (EOR) is the individual responsible for directing the work of mi via employees, including recruiting, hiring, managing and terminating all employees. The EOR tracks expenditures for employee payroll, goods, and services. EORs authorize the payment of timesheets by the financial management agency (FMA). An eligible recipient is required to have an EOR when he or she utilizes employees for mi via services. An eligible recipient may be his or her own EOR unless the eligible recipient is a minor, or has ~~[an authorized representative]~~ a plenary or limited guardianship or conservatorship over financial matters

in place. An eligible recipient may also designate an individual of his or her choice to serve as the EOR, subject to the EOR meeting the qualifications specified in this rule. A power of attorney (POA) or other legal instrument may not be used to assign the EOR responsibilities, in part or in full, to another individual and may not be used to circumvent the requirements of the EOR as designated in this rule.

H. Financial management agency (FMA): Contractor that helps implement the AAB by paying the eligible recipient's service providers and tracking expenses.

I. Home and community-based services (HCBS) waiver: A set of MAD services that provides alternatives to long-term care services in institutional settings, such as the mi via waiver program. CMS waives certain statutory requirements of the Social Security Act to allow HSD to provide an array of community-based options through these waiver programs.

J. Individual budgetary allotment (IBA): The maximum budget allotment available to an eligible recipient, determined by his or her age established level of care (LOC). Based on this maximum amount, the eligible recipient will develop a plan to meet his or her assessed functional, medical and habilitative needs to enable the eligible recipient to remain in his or her community.

K. Intermediate care facilities for individuals with intellectual disabilities (ICF/IID): Facilities that are licensed and certified by the New Mexico DOH to provide room and board, continuous active treatment and other services for eligible recipients with a primary diagnosis of intellectually disabled.

L. Legally responsible individual (LRI): A person who has a duty under state law to care for another person. This category typically includes: the parent (biological, legal, or adoptive) of a minor child, or a guardian who must provide care to an eligible recipient under 18 years of age or the spouse of

an eligible recipient.

M. Level of care

(LOC): The level of care an eligible recipient must meet to be eligible for the mi via program.

N. Mi via: Mi via

is the name of the Section 1915 (c) MAD self-directed HCBS waiver program through which an eligible recipient has the option to access services to allow him or her to remain in the community.

O. Personal

representative: The eligible recipient may select an individual to act as his or her personal representative for the purpose of offering support and assisting the eligible recipient understand his or her mi via services. The eligible recipient does not need a legal relationship with his or her personal representative. The personal representative will not have the authority to direct the member's mi via waiver services or make decisions on behalf of the eligible recipient. Directing services remains the sole responsibility of the eligible recipient or his or her authorized representative. The personal representative cannot serve as the eligible recipient's consultant and cannot approve his or her specific timesheet.

P. Reconsideration:

An eligible recipient who disagrees with a clinical or medical utilization review decision or action may submit a written request to the third-party assessor for reconsideration of its decision. The eligible recipient or his or her authorized representative may submit the request for a reconsideration through the consultant or the consultant agency or may submit the request directly to MAD.

Q. Self-direction:

The process applied to the service delivery system wherein the eligible recipient identifies, accesses and manages the services (among the MAD approved mi via waiver services and goods) that meet his or her assessed therapeutic, rehabilitative, habilitative, health or safety needs to support the eligible recipient to remain in his or her community.

R. Service and

support plan (SSP): A plan that

includes mi via services that meet the eligible recipient's needs that include: the projected amount, the frequency and the duration of the services; the type of provider who will furnish each service; other services the eligible recipient will access; and the eligible recipient's available supports that will compliment mi via services in meeting his or her needs.

S. Support guide:

A function of the consultant provider that directly assists the eligible recipient in implementing the SSP to ensure access to mi via services and supports and to enhance success with self-direction. Support guide services provide assistance to the eligible recipient with employer or vendor functions or with other aspects of implementing his or her SSP.

T. Third-party

assessor (TPA): The MAD contractor who determines and re-determines LOC and medical eligibility for mi via services. The TPA also reviews the eligible recipient's SSP and approves an AAB for the eligible recipient. The TPA performs utilization management duties of all mi via services.

U. Waiver:

A program in which the CMS has waived certain statutory requirements of the Social Security Act to allow states to provide an array of HCBS options through MAD as an alternative to providing long-term care services in an institutional setting.

[8.314.6.7 NMAC - Rp, 8.314.6.7 NMAC, 3/1/2016; A, 11/1/2018]

8.314.6.8 ~~[MISSION-STATEMENT: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.]~~

[RESERVED]
[8.314.6.8 NMAC - Rp, 8.314.6.8 NMAC, 3/1/2016; A, 11/1/2018]

8.314.6.10 MI VIA CONTRACTED ENTITIES AND PROVIDERS SUPPORTING SELF-DIRECTED SERVICES: Services are to be provided in the least restrictive manner. HSD does

not allow for the use of any restraints, restrictive interventions, or seclusions to an eligible mi via recipient. The following resources and services have been established to assist eligible recipients to self-direct services. These include the following:

A. Consultant

services: Consultant services are direct services intended to educate, guide and assist the eligible recipient to make informed planning decisions about services and supports, to develop a SSP that is based on the eligible recipient's assessed disability-related needs and to assist the eligible recipient with quality assurance related to the SSP and AAB.

B. Third-party

assessor: The TPA or MAD's designee is responsible for determining medical eligibility through a LOC assessment, assigning the applicable IBA, approving the SSP and authorizing an eligible recipient's annual budget in accordance with 8.314.6 NMAC and the mi via service standards. The TPA:

(1) determines

medical eligibility using the LOC criteria in 8.314.6.13 NMAC; determinations are done initially for an eligible recipient who is newly enrolled in the mi via program and thereafter at least annually for currently enrolled mi via eligible recipients; the LOC assessment is done in person with the eligible recipient in his or her home, a location agreed upon by the [participant] eligible recipient and TPA and approved by HSD, or in an inpatient setting; the TPA may re-evaluate the LOC more often than annually if there is an indication that the eligible recipient's medical condition or LOC has changed;

(2) applies

the information from the LOC documentation and the following assessments: long-term care assessment abstract (ICF/IID), the comprehensive individual assessment (CIA), or other MAD approved assessment tools, as appropriate for the COE, to assign the IBA for the eligible recipient that is medically eligible; and

(3) reviews and approves the SSP and the annual budget request resulting in an AAB, at least annually or more often if there is a change in the eligible recipient's circumstances, in accordance with 8.314.6 NMAC and mi via service standards.

C. Financial management agent (FMA): The FMA acts as the intermediary between the eligible recipient and the MAD payment system and assists the eligible recipient or the EOR with employer-related responsibilities. The FMA pays employees and vendors based upon an approved SSP and AAB. The FMA assures there is eligible recipient and program compliance with state and federal employment requirements, monitors, and makes available to the eligible recipient the reports related to utilization of services and budget expenditures. Based on the eligible recipient's approved individual SSP and AAB, the FMA must:

(1) verify that the recipient is eligible for MAD services prior to making payment for services;

(2) receive and verify that all required employee and vendor documentation and qualifications are in compliance with 8.314.6 NMAC and mi via service standards;

(3) establish an accounting for each eligible recipient's AAB;

(4) process and pay invoices for goods, services, and supports approved in the SSP and the AAB and supported by required documentation;

(5) process all payroll functions on behalf of the eligible recipient and EORs including:

(a) collect and process timesheets of employees;

(b) process payroll, withholding, filing, and payment of applicable federal, state and local employment-related taxes and insurance; and

(c) track and report disbursements and

balances of the eligible recipient's AAB and provide a monthly report of expenditures and budget status to the eligible recipient and his or her consultant, and quarterly and annual documentation of expenditures to MAD;

(6) receive and verify employee and vendor agreements, including collecting required provider qualifications;

(7) monitor hours billed for services provided by the LRI and the total amounts billed for all goods and services during the month;

(8) answer inquiries from the eligible recipient and solve problems related to the FMA's responsibilities; and

(9) report to the consultant provider, MAD and DOH any concerns related to the health and safety of an eligible recipient or if the eligible recipient is not following the approved SSP and AAB.

[8.314.6.10 NMAC - Rp, 8.314.6.10 NMAC, 3/1/2016; A, 11/1/2018]

8.314.6.11 QUALIFICATIONS FOR ELIGIBLE INDIVIDUAL EMPLOYEES, INDEPENDENT PROVIDERS, PROVIDER AGENCIES, AND VENDORS:

A. Requirements for individual employees, independent providers, provider agencies and vendors: In order to be approved as an individual employee, an independent provider, including non-licensed homemaker or direct support worker, a provider agency, (excluding consultant providers which are covered in a different subsection) or a vendor, including those that provide professional services, each individual or entity must meet the general and service specific qualifications set forth in this rule initially and continually meet licensure requirements as applicable, and submit an employee or vendor enrollment packet, specific to the provider or vendor type, for approval to the FMA. The provider agency is responsible to ensure that all agency employees meet the

required qualifications. In order to be an authorized provider for the mi via program and receive payment for delivered services, the provider must complete and sign an employee or vendor provider agreement and all required tax documents. Individual employees may not provide more than 40 hours of services in a consecutive seven-day work week. The provider must have credentials verified by the eligible recipient or the EOR and the FMA.

(1) Prior to rendering services to an eligible mi via recipient as an independent contractor for homemaker or direct support worker, respite, community direct support, employment supports, and in-home living support provider, an individual seeking to provide these services must complete and submit a nature of services questionnaire to the FMA. The FMA will determine, based on the nature of services questionnaire if the relationship is that of an employee or an independent contractor.

~~(a) obtain an internal revenue service (IRS)-SS8 letter determining the worker's status as an independent contractor or as an employee; and~~

~~(b) provide to the FMA and consultant agency the IRS SS-8 letter; if the IRS SS-8 letter either determines or informs the worker that he or she meets the status of an independent contractor, the consultant agency must submit the SSP changes to the TPA; once the SSP is approved the independent contractor may begin the enrollment process with the FMA.]~~

(2) An authorized consultant provider must have a MAD approved provider participation agreement (PPA) and the appropriate approved DOH developmental disabilities division (DDSD) agreement.

B. General qualifications:

(1) Individual employees, independent providers, including non-licensed homemaker/direct support workers who are employed by a mi via eligible

recipient to provide direct services shall:

(a) be at least 18 years of age;

(b) be qualified to perform the service and demonstrate capacity to perform required tasks;

(c) be able to communicate successfully with the eligible recipient;

(d) prior to the initial hire and every three years after initial hire pass a nationwide caregiver criminal history screening pursuant to Section 29-17-2 et seq., NMSA 1978 and 7.1.9 NMAC and an abuse registry screen pursuant to Section 27-7a-1 et seq., NMSA 1978 and 8.11.6 NMAC; additionally employees must pass the employee abuse registry (EAR) pursuant to 7.1.12 NMAC, certified nurse aide registry pursuant to 16-12.20 NMAC, office of inspector exclusion list pursuant to section 1128B(f) of the Social Security Act, and the national sex offender registry pursuant to 6201 as federal authority for active programs.

(e) complete training on critical incident, abuse, neglect, and exploitation reporting;

(f) complete training specific to the eligible recipient's needs; an assessment of training needs is determined by the eligible recipient or his or her authorized representative; the eligible recipient is also responsible for providing and arranging for employee training and supervising employee performance; training expenses for paid employees cannot be paid for with the eligible recipient's AAB; and

(g) meet any other service specific qualifications, as specified in this rule and its service standards.

(2) Vendors, including those providing professional services shall meet the following qualifications:

(a) shall be qualified to provide the service;

(b)

shall possess a valid business license, if applicable;

(c) meet financial solvency, maintain and adhere to training requirements, record management, quality assurance policy and procedures, if applicable;

(d) be in good standing with and comply with his or her New Mexico practice board or other certification or licensing required to render mi via services in New Mexico; and

(e) must not have a DOH current adverse action against them.

(f) assure that employees of the vendor:

(i) are at least 18 years of age;

(ii) are qualified to perform the service and demonstrate capacity to perform required tasks;

(iii) are able to communicate successfully with the eligible recipient;

(iv) pass a nationwide caregiver criminal history screening pursuant to Section 29-17-2 et seq., NMSA 1978 and 7.1.9 NMAC and an abuse registry screen pursuant to Section 27-7a-1 et seq., NMSA 1978 and 8.11.6 NMAC;

(v) complete training on critical incident, abuse, neglect, and exploitation reporting;

(vi) complete training specific to the eligible recipient's needs; an assessment of training needs is determined by the eligible recipient or his or her authorized representative; the eligible recipient is also responsible for providing and arranging for employee training and supervising employee performance; training expenses for paid employees cannot be paid for with the eligible recipient's AAB; and

(g) meet any other service specific qualifications, as specified in this rule and its service standards.

(3) Qualified and approved relatives, authorized representatives or personal representatives may be hired as employees and paid for the provision of mi via services (except consultant

and support guides, customized community group supports services, transportation services for a minor, and [related goods] individual directed goods and services). The services must be identified in the eligible recipient's approved SSP and AAB, and the EOR is responsible for verifying that services have been rendered by completing, signing, and submitting documentation, including the timesheet, to the FMA. These services must be provided within the limits of the approved SSP and AAB and may not be paid in excess of 40 hours in a consecutive seven-day work week. LRIs, authorized representatives, personal representatives or relatives may not be both a paid employee for the eligible recipient and serve as the eligible recipient's EOR. An authorized or personal representative who is also an employee may not approve his or her own timesheet.

(4) A LRI may be hired and paid for provision of mi via services (except transportation services when requested for a minor, a consultant and support guide, and customized community group supports services, and related goods) under extraordinary circumstances [(†)] in order to assure the health and welfare of the eligible recipient and [(††)] to avoid institutionalization when approved by DOH. MAD must be able to receive federal financial participation (FFP) for the services.

(a) Extraordinary circumstances include the inability of the LRI to find other qualified, suitable caregivers when the LRI would otherwise be absent from the home and, thus, the caregiver must stay at home to ensure the eligible recipient's health and safety.

(b) LRIs may not be paid for any services that they would ordinarily perform in the household for individuals of the same age who do not have a disability or chronic illness.

(c) Services provided by LRIs must:

(i) meet the definition of a service or support and be specified in the

eligible recipient's approved SSP and AAB;
 be provided by a parent or spouse who meets the provider qualifications and training standards specified in the mi via rule for that service; and
 be paid at a rate that does not exceed that which would otherwise be paid to a provider of a similar service, and be approved by the TPA.

A LRI who is a service provider must comply with the following:

a parent, parents in combination, legal guardian of a minor, or a spouse of the eligible recipient, may not provide more than 40 hours of services in a consecutive seven-day work week; for parents or legal guardians of the eligible recipient, 40 hours is the total amount of service regardless of the number of eligible recipients under the age of 21 who receive services through the mi via program;

planned work schedules must be identified in the approved SSP and AAB, and variations to the schedule must be reported to the eligible recipient's consultant and noted and supplied to the FMA when billing; and

timesheets and other required documentation must be maintained and submitted to the FMA for hours paid.

An eligible recipient must be offered a choice of providers. There must be written approval from DOH when a provider is chosen who is:

a parent or legal guardian of an eligible recipient who is a minor; or
 the eligible recipient's spouse.

This written approval must be documented in the SSP.

The FMA monitors, on a monthly basis, hours billed for services provided by the LRI and the total amounts billed for all goods and services during the month.

Once enrolled, providers, vendors and contractors receive a packet of information from the eligible recipient or FMA, including billing instructions, and other pertinent materials. Mi via eligible recipients or EOR's or authorized representatives are responsible for ensuring that providers, vendors and contractors have received these materials and for updating them as new materials are received from MAD and DOH. MAD makes available on its website, and in hard copy format, information necessary to participate in medical assistance programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. DOH makes available on its website information, instructions and guidance on its administrative requirements for the mi via program. When enrolled, an eligible recipient or his or her authorized representative, or the provider, vendor or contractor receives instruction on how to access these documents. It is the responsibility of the eligible recipient or authorized representative, or the provider, vendor, or contractor to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements. The eligible recipient or authorized representative, or the provider, vendor, or contractor must contact HSD or its authorized agents to request hard copies of any program rules manuals, billing and utilization review instructions, and other pertinent materials and to obtain answers to questions on or not covered by these materials.

No employee of any type may be paid in excess of 40 hours within the established consecutive seven day work week for any one eligible recipient or EOR.

No provider agency is permitted to perform both LOC assessments and provide any services for the eligible recipients.

Providers may market their services, but are prohibited from soliciting eligible recipients under any circumstances such as offering an eligible recipient or his or her authorized representative gratuities in the form of entertainment, gifts, financial compensation to alter that eligible recipient's selection of provider agencies, service agreements, medication, supplies, goods or services.

Those signing a payment request form for vendor services rendered to an eligible recipient may not serve as an employee, contractor or subcontractor of that vendor for that eligible recipient. An eligible recipient who does not have an authorized representative providing oversight of the eligible recipient's financial matters may sign off on the payment request form.

The EOR is the individual responsible for directing the work of the eligible recipient's employees. An eligible recipient is required to have an EOR when utilizing employees. The EOR may be the eligible recipient or a designated qualified individual. A recipient through the use of the mi via EOR questionnaire will determine if an individual meets the requirements to serve as an EOR. The recipient's consultant will provide him or her with the questionnaire. The questionnaire shall be completed by the recipient with assistance from the consultant upon request. The consultant shall maintain a copy of the completed questionnaire in the recipient's file. When utilizing both vendors and employees, an EOR is required for oversight of employees and to sign payment request forms for vendors. The EOR must be documented with the FMA, whether the EOR is the eligible recipient or a designated qualified individual. A POA or other legal instrument may not be used to assign the EOR responsibilities, in part or in full, to another individual and may not be used to circumvent the requirements of the EOR as designated in 8.314.6 NMAC.

(a) An eligible recipient that has ~~[an authorized representative]~~ a plenary or limited guardianship or conservatorship over the eligible recipient's financial matters may not be his or her own EOR nor sign payment vendor request forms for vendors.

(b) A person under the age of 18 years may not be an EOR.

(c) An EOR who lives outside New Mexico shall reside within 100 miles of the New Mexico state border. Any out of state EOR residing beyond this radius who has been approved prior to the effective date of this rule may continue to serve as the EOR.

(d) The eligible recipient's provider may not also be his or her EOR nor sign payment vendor request forms for vendors.

(e) An EOR whose performance compromises the health, safety or welfare of the eligible recipient, may have his or her status as an EOR terminated.

(f) An EOR may not be paid for any other services utilized by the eligible recipient for whom he or she is the EOR, whether as an employee of the eligible recipient, a vendor, or an employee or contractor, or subcontractor of an agency. An EOR makes important determinations about what is in the best interest of the eligible recipient, and should not have any conflict of interest. An EOR assists in the management of the eligible recipient's budget and should have no personal benefit connected to the services requested or approved on the budget.

(g) An EOR is not required if an eligible recipient is utilizing only vendors for services; however, an EOR can be identified by an eligible recipient to assist with the use of vendors. In some instances an EOR for vendor services may be required by MAD. A recipient utilizing vendors only who selects not to have an EOR will

submit documentation to the FMA identifying an authorized signer who will be responsible for signing payment request forms. [~~Those signing a payment request form~~] The authorized signer for vendor services rendered to an eligible recipient may not serve as an employee, contractor or subcontractor of that vendor for that eligible recipient. An eligible recipient who does not have ~~[an authorized representative]~~ a plenary or limited guardianship or conservatorship providing oversight of the eligible recipient's financial matters may ~~[sign off on]~~ be his or her own authorized signer for the payment request form. A POA may not be used to assign the responsibilities of the authorized signer, in part or in full, to another individual and may not be used to circumvent the requirements of the authorized signer as designated in this rule.

(h) An EOR, or authorized signer, is required to complete and provide documents to the FMA according to the timelines and rules established by the state. Documents include, but are not limited to: vendor and employee enrollment agreements, vendor information forms, criminal background check forms, timesheets, payment request forms, invoices, and other documents needed by the FMA to enroll and process payment to employees and vendors. The mi via program requires that employee timesheets be submitted online unless the recipient has an approved exception from HSD.

C. Service specific qualifications for consultant services providers: In addition to general requirements, a consultant provider shall ensure that all individuals hired or contracted to provide consultant services meet the criteria specified in this section and comply with all applicable NMAC MAD rules and mi via service standards.

(1) Consultant providers shall:
(a) possess a minimum of a bachelor's

degree in social work, psychology, human services, counseling, nursing, special education or a closely related field, and have one year of supervised experience working with people living with disabilities; or

(b) have a minimum of six years of direct experience related to the delivery of social services to people living with disabilities; and

(c) be employed by an enrolled mi via consultant provider agency; and

(d) complete all required mi via program orientation and training courses; and
(e) be at least 21 years of age.

(2) Consultant providers may also use non-professional staff to carry out support guide functions. Support guides provide more intensive supports, as detailed in the service section of these rules. Support guides help the eligible recipient more effectively self-direct services when there is an identified need for this type of assistance. Consultant providers shall ensure that non-professional support staff:

(a) are supervised by a qualified consultant as specified in this rule;

(b) have experience working with people living with disabilities;

(c) demonstrate the capacity to meet the eligible recipient's assessed needs related to the implementation of the SSP;

(d) possess knowledge of local resources, community events, formal and informal community organizations and networks;

(e) are able to accommodate a varied, flexible and on-call type of work schedule in order to meet the needs of the eligible recipient; and

(f) complete training on self-direction and incident reporting; and

(g) be at least 18 years of age.

D. Service specific qualifications for personal plan facilitation providers: In addition to general MAD requirements, a personal plan facilitator agency must hold a current business license, and meet financial solvency, training, records management, and quality assurance rules and requirements. Personal plan facilitators must possess the following qualifications in addition to the general qualifications:

- (1) have at least one year of experience working with persons with disabilities; and
- (2) be trained and mentored in the planning tool(s) used; and
- (3) have at least one year experience in providing the personal plan facilitation service.

E. Service specific qualification for living supports providers: In addition to general MAD requirements, the following types of providers must meet additional qualifications specific to the type of services provided.

(1) Qualifications of homemaker direct support service providers: Provider agencies must be homemaker agencies certified by the MAD or its designee or a home health agency holding a New Mexico home health agency license. A homemaker and home health agency must hold a current business license when applicable, and meet financial solvency, training, records management, and quality assurance rules and requirements.

(2) Qualifications of home health aide service providers: Home health or homemaker agencies must hold a New Mexico current home health agency, rural health clinic, or federally qualified health center license. Home health aides must have successfully completed a home health aide training program, as described in 42 CFR 484.36(a)(1) and (2) or have successfully completed a home health aide training program pursuant to 7.28.2.30 NMAC. Home health aides must also be supervised by a registered nurse (RN) licensed in New

Mexico. Such supervision must occur at least once every 60 calendar days in the eligible recipient's home, and shall be in accordance with the New Mexico Nurse Practice Act and be specific to the eligible recipient's SSP.

(3) Qualifications of in-home living supports providers: Provider agencies must hold a current business license, and meet financial solvency, training, records management, and quality assurance rules and requirements. In-home living agency staff and its direct staff rendering the service must have one year of experience working with people with disabilities. In-home living support agencies must assure appropriate staff for a 24 hour response capability to address scheduled or unpredictable needs related to health, safety, or security in order to meet the needs of the recipient. In-home living support agencies are not fiscal intermediaries and cannot bill nor be paid for work that the recipient or EOR are responsible for as required by Paragraph (6) of Subsection B of 8.314.6.11 NMAC and the mi via service standards.

F. Service specific qualifications for community membership support providers: In addition to general MAD requirements, the following types of providers must meet additional qualifications specific to the type of services provided. An agency providing community membership services must hold a current business license, and meet financial solvency, training, records management, and quality assurance rules and requirements.

(1) Qualifications of supported employment providers:

- (a) A job developer, whether an agency or individual provider, must:
 - (i) be at least 21 years of age;
 - (ii) pass criminal background check and abuse registry screen;

- (iii) have experience developing and using job and task analyses;
- (iv) have experience working with the division of vocational rehabilitation (DVR), a traditional DD waiver employment provider, an independent living center or other organization that provides employment supports or services for people with disabilities and be trained on the purposes, functions and general practices of entities such as the department of workforce solutions navigators, one-stop career centers, business leadership network, chamber of commerce, job accommodation network, small business development centers, local businesses, retired executives, DDS resources, and have substantial knowledge of the Americans with Disabilities Act (ADA); and
- (v) complete training on critical incident, abuse, neglect, and exploitation.
- (b) Job coaches whether an agency or individual provider, must:
 - (i) be at least 18 years of age;
 - (ii) have a high school diploma or GED;
 - (iii) pass criminal background check and abuse registry screen;
 - (iv) be qualified to perform the service;
 - (v) have experience with providing employment supports and training methods;
 - (vi) be knowledgeable about business and employment resources;
 - (vii) have the ability to successfully communicate with the employer and with the eligible recipient and his or her coworkers to develop and encourage natural supports on the job; and
 - (viii) complete training on critical incident, abuse, neglect, and exploitation.

(2)

Qualifications of customized community group supports providers:

Agencies providing community group support services must hold a current business license, and meet financial solvency, training, records management, and quality assurance rules and requirements. Providers, whether an agency staff or an individual provider must meet the following qualifications:

- (i) must be at least 18 years of age;
 - (ii) pass criminal background check and abuse registry screen;
 - (iii) demonstrate capacity to perform required tasks;
 - (iv) complete training on critical incident, abuse, neglect, and exploitation reporting; and
 - (v) have the ability to successfully communicate with the eligible recipient.]
- (a) must be at least 18 years of age;
 - (b) pass criminal background check and abuse registry screen;
 - (c) demonstrate capacity to perform required tasks;
 - (d) complete training on critical incident, abuse, neglect, and exploitation reporting; and
 - (e) have the ability to successfully communicate with the eligible recipient.

G. Service specific qualifications for providers of health and wellness supports:

In addition to the general MAD qualifications, the following types of providers must meet additional qualifications specific to the type of services provided.

(1)

Qualifications of extended state plan skilled therapy providers for adults: Physical and occupational therapists, speech/language pathologists, physical therapy

assistants and occupational therapy assistants must possess a therapy license in their respective field from the New Mexico regulation and licensing department (RLD). Speech clinical fellows must possess a clinical fellow license from the New Mexico RLD.

(2)

Qualifications of behavior support consultation providers:

Behavior support consultation provider agencies shall have a current business license issued by the state, county or city government, if required. Behavior support consultation provider agencies shall comply with all applicable federal, state, and rules and procedures regarding behavior consultation. Providers of behavior support consultation services must possess qualifications in at least one of the following areas:

- (a) a licensed psychiatrist by his or her New Mexico practice board;
- (b) a regulation and licensing department (RLD) licensed clinical psychologist;
- (c) a RLD licensed psychologist associate, (masters or Ph.D. level);
- (d) a RLD licensed independent social worker (LISW);
- (e) a RLD licensed master social worker (LMSW);
- (f) a RLD licensed professional clinical counselor (LPCC);
- (g) a licensed clinical nurse specialist (CNS) or a certified nurse practitioner (CNP) who is certified in psychiatric nursing by a national nursing organization who can furnish services to adults or children as his or her certification permits;
- (h) a RLD licensed marriage and family therapist (LMFT); or
- (i) a RLD licensed practicing art therapist (LPAT) by RLD.

(3)

Qualifications of nutritional counseling providers: Nutritional

counseling providers must maintain a current registration as dietitians by the commission on dietetic registration of the American dietetic association and licensed by the RLD, (Nutrition and Dietetics Practice Act Section 61-7A-7 *et seq.*, , NMSA 1978).

(4)

Qualifications of private duty nursing providers for adults:

Direct nursing services are provided by individuals who are currently licensed as registered or practical nurses by the New Mexico state board of nursing, (Sections 61-3-14 and 61-3-18 NMSA 1978).

(5)

Qualifications of specialized therapy providers:

For each type of specialized therapy providers, the provider must hold the appropriate New Mexico licensure or certification for the services he or she renders to an eligible recipient:

- (a) a RLD license in acupuncture and oriental medicine;
- (b) a license or certification with the appropriate specialized training and clinical experience and supervision whose scope of practice includes biofeedback;
- (c) a RLD license in chiropractic medicine;
- (d) a license or certification for which he or she has appropriate specialized training and clinical experience and whose scope of practice includes cognitive rehabilitation therapy;
- (e) a RLD license in a physical therapy, or occupational therapy, or speech therapy and whose scope of practice includes hippotherapy with the appropriate specialized training and experience;
- (f) a RLD license in massage therapy;
- (g) a RLD license in naprapathic medicine;
- (h) a master's or a higher level behavioral health degree with specialized play therapy training, clinical experience and supervision and whose RLD license's scope of practice includes play therapy; and

(i)
a native American healer who is recognized as a traditional healer within his or her community.

H. Service specific qualifications for other supports providers: In addition to the general MAD qualifications, the following types of providers must meet additional qualifications specific to the type of services provided.

(1)
Qualifications of transportation providers:

(a)
Individual transportation providers must:

(i)
possess a valid New Mexico driver’s license with the appropriate classification;

(ii)
complete training on critical incident, abuse, neglect and exploitation reporting procedures; and

(iii)
have a current insurance policy and vehicle registration.

(b)
Transportation vendors must hold a current business license and tax identification number. Each agency will ensure any vehicle used to transport an eligible recipient is equipped with an up-to-date first aid kit. Each agency will ensure transportation drivers meet the following qualifications:

(i)
holds a valid New Mexico driver’s license of the appropriate classification to transport an eligible recipient;

(ii)
holds a current vehicle insurance policy meeting New Mexico’s insurance mandates in place for the vehicle used to transport an eligible recipient; and

(iii)
holds a New Mexico vehicle registration for the vehicle used to transport an eligible recipient.

(2)
Qualifications of emergency response providers: Emergency response providers must comply with all laws, rules and regulations of the

state of New Mexico.

(3)
Qualifications of respite providers: Respite services may be provided by eligible individual respite providers; RN or practical nurses (LPN); or respite provider agencies. Individual RN or LPN providers must be licensed by the New Mexico board of nursing as an RN or LPN. Respite provider agencies must hold a current business license, and meet financial solvency, training, records management and quality assurance rules and requirements.

(4)
Qualifications of [related goods] individual directed goods and services vendors: [Related goods] Individual directed goods and services vendors must hold a current business license and tax identification for New Mexico and the federal government. Vendors for individual directed goods and services are retail stores, community health centers, or medical supply stores.

(5)
Qualifications of environmental modifications providers: Environmental modification providers must possess an appropriate plumbing, electrician, contractor or other appropriate New Mexico licensure. [8.314.6.11 NMAC - Rp, 8.314.6.11 NMAC, 3/1/2016; A, 11/1/2018]

8.314.6.14 ELIGIBLE RECIPIENT AND EOR RESPONSIBILITIES: Mi via eligible recipients have certain responsibilities to participate in the program. Failure to comply with these responsibilities or other program rules and service standards can result in termination from the program. The eligible recipient and EOR, or authorized signer if the recipient has vendors only, have the following responsibilities:

A. To maintain eligibility the recipient must complete required documentation demonstrating medical and financial eligibility both upon application and annually at recertification, meet in person with the TPA for a

comprehensive LOC assessment in the eligible recipient’s home, or in a location approved by the state and seek assistance with the application and the recertification process as needed from a mi via consultant.

B. To participate in the mi via program, the eligible recipient must:

(1) comply with applicable NMAC rules to include this rule, mi via service standards and requirements that govern the program;

(2) collaborate with the consultant to determine support needs related to the activities of self-direction;

(3) collaborate with the consultant to develop an SSP using the IBA in accordance with applicable NMAC rules to include this rule and service standards;

(4) use mi via program funds appropriately by only requesting and purchasing goods and services covered by the mi via program in accordance with program rules which are identified in the eligible recipient’s approved SSP;

(5) comply with the approved SSP and not exceed the AAB;

(a) if the eligible recipient does not adequately allocate the resources contained in the AAB resulting in a premature depletion of the AAB amount during an SSP year due to mismanagement or failure to properly track expenditures, the failure to properly allocate does not substantiate a claim for a budget increase (i.e., if all of the AAB is expended within the first three months of the SSP year, it is not justification for an increase in the budget for the SSP year);

(b) revisions to the AAB may occur within the SSP year, and the eligible recipient is responsible for assuring that all expenditures are in compliance with the most current AAB in effect;

(i) the SSP must be amended first to reflect a change in the eligible recipient’s needs or circumstances

before any revisions to the AAB can be requested;

(ii) other than for critical health and safety reasons, budget revisions may not be submitted to the TPA for review within the last 60 calendar days of the budget year;

(c) no mi via program funds can be used to purchase goods or services prior to TPA approval of the SSP and annual budget request;

(d) any funds not utilized within the SSP and AAB year cannot be carried over into the following year;

(6) access consultant services based upon identified need(s) in order to carry out the approved SSP;

(7) collaborate with the consultant to appropriately document service delivery and maintain those documents for evidence of services received;

(8) report concerns or problems with any part of the mi via program to the consultant or if the concern or problem is with the consultant, to DOH;

(9) work with the TPA agent by attending scheduled meetings, in the eligible recipient's home if necessary and providing documentation as requested;

(10) respond to requests for additional documentation and information from the consultant provider, FMA, and the TPA within the required deadlines;

(11) report to the local HSD income support division (ISD) office within 10 calendar days any change in circumstances, including a change in address, which might affect eligibility for the program; changes in address or other contact information must also be reported to the consultant provider and the FMA within 10 calendar days;

(12) report to the TPA and consultant provider if hospitalized for more than three consecutive nights so that an appropriate LOC can be obtained;

(13) keep track of all budget expenditures and assure

that all expenditures are within the AAB;

(14) have monthly contact and meet face-to-face quarterly with the consultant; and

(15) have an EOR if utilizing employees for services; the eligible recipient may be his or her own EOR unless the eligible recipient is a minor, or he or she has ~~[an authorized representative designated]~~ a plenary or limited guardianship or conservatorship over financial matters; an eligible recipient may also designate an individual of his or her choice to serve as the EOR, subject to the EOR meeting the qualifications specified in this rule. If the recipient is using vendors only and selects not to have an EOR then the recipient will identify an authorized signer for payment request forms; the eligible recipient may be his or her own authorized signer unless the eligible recipient is a minor, or he or she has a plenary or limited guardianship or conservatorship over financial matters. A POA or other legal instrument may not be used to assign the EOR, or authorized signer, responsibilities, in part or in full, to another individual and may not be used to circumvent the requirements of the EOR, or authorized signer, as designated in this rule.

C. Additional responsibilities of the eligible recipient or EOR, or authorized signer, are detailed below:

(1) Submit all required documents to the FMA according to the timelines and rules established by the state to meet employer-related responsibilities. This includes, but is not limited to, documents for payment to employees and vendors and payment of taxes and other financial obligations within required timelines. The EOR is responsible for submitting mi via employee timesheets online unless the recipient has an approved exception from HSD.

(2) Report any incidents of abuse, neglect or exploitation to the appropriate state agency.

(3) Arrange

for the delivery of services, supports and goods.

(4) Hire, manage, and terminate employees.

(5) Maintain records and documentation for at least six years from first date of service and ongoing.

D. Voluntary termination: An eligible recipient has a choice of receiving services through the non-self-directed waiver or through the mi via HCBS waiver. If the eligible recipient wishes to change to the non-self-directed HCBS waiver, a waiver change must occur in accordance with the mi via NMAC rule and mi via service standards. Transitions can only occur at the first of a month.

E. Involuntary termination: A mi via eligible recipient may be terminated involuntarily by MAD and DOH and offered services through a non-self-directed waiver or the medicaid state plan under the following circumstances.

(1) The eligible recipient refuses to comply with this rule and mi via service standards after receiving focused technical assistance on multiple occasions, support from the program staff, consultant, or FMA, which is supported by documentation of the efforts to assist the eligible recipient.

(2) The eligible recipient is in immediate risk to his or her health or safety by continued self-direction of services, e.g., the eligible recipient is in imminent risk of death or serious bodily injury related to participation in the mi via program. Examples include but are not limited to the following.

(a) The eligible recipient refuses to include and maintain services in his or her SSP and AAB that would address health and safety issues identified in his or her medical assessment or challenges the assessment after repeated and focused technical assistance and support from program staff, consultant, or FMA.

(b) The eligible recipient is experiencing

significant health or safety needs, and, after a referral to the state contractor for level of risk determination and assistance, refuses to incorporate the contractor’s recommendations into his or her SSP and AAB.

(c)

The eligible recipient exhibits behaviors which endanger himself or herself or others.

(3)

The eligible recipient misuses mi via funds following repeated and focused technical assistance and support from the consultant or FMA, which is supported by documentation.

(4)

The eligible recipient commits medicaid fraud.

(5)

When DOH is notified the eligible recipient continues to utilize either an employee or a vendor, or both who have consistently been substantiated against for abuse, neglect, exploitation while providing mi via services after notification of this on multiple occasions by DOH.

(6)

The eligible recipient who is involuntarily terminated from the mi via program will be offered a non-self-directed waiver alternative. If transfer to another waiver is authorized and accepted by the eligible recipient, he or she will continue to receive the services and supports from mi via until the day before the new waiver services start. This will ensure that no break in service occurs. The mi via consultant and the case manager in the new waiver will work closely together with the eligible recipient to ensure that the eligible recipient’s health and safety is maintained.

[8.314.6.14 NMAC - Rp, 8.314.6.14 NMAC, 3/1/2016; A, 11/1/2018]

8.314.6.15 SERVICE DESCRIPTIONS AND COVERAGE CRITERIA:

The services covered by the mi via program are intended to provide a community-based alternative to institutional care for an eligible recipient that allows greater choice, direction and control over services and supports in a self-directed

environment. Mi via services must specifically address a therapeutic, rehabilitative, habilitative, health or safety need that results from the eligible recipient’s qualifying condition. The mi via program is the payor of last resort. The coverage of mi via services must be in accordance with 8.314.6 NMAC and mi via service standards. Waiver [participants] recipients in all living arrangements are assessed individually and service plan development is individualized. The TPA will assess the service plans of [participants] recipients living in the same residence to determine whether or not there are services that are common to more than one [participant] recipient living in the same household in order to determine whether one or more employees may be needed to ensure that individual different cognitive, clinical, and habilitative needs are met. Mi via services must be provided in integrated settings and facilitate full access to the community; ensure the recipient receives services in the community to the same degree of access as those individuals not receiving HCBS services; maximize independence in making life choices; be chosen by the recipient in consultation with the guardian as applicable; ensure the right to privacy, dignity, respect, and freedom from coercion and restraint; optimize recipient initiative, autonomy and independence in making life choices; provide an opportunity to seek competitive employment; and facilitate choice of service and who provides them.

A. General

requirements regarding mi via covered services. To be considered a covered service under the mi via program, the following criteria must be met. Services, supports and goods must:

(1) directly

address the eligible recipient’s qualifying condition or disability;

(2) meet the

eligible recipient’s clinical, functional, medical or habilitative needs;

(3) be

designed and delivered to advance the desired outcomes in the eligible recipient’s service and support plan; and

(4) support

the eligible recipient to remain in the community and reduce the risk of institutionalization.

B. Consultant

pre-eligibility and enrollment services: Consultant pre-eligibility and enrollment services are intended to provide information, support, guidance, and assistance to an individual during the medicaid financial and medical eligibility process. The level of support provided is based upon the unique needs of the individual. When an opportunity to be considered for mi via program services is offered to an individual, he or she must complete a primary freedom of choice form. The purpose of this form is for the individual to select a consultant provider. The chosen consultant provider offers pre-eligibility and enrollment services as well as on-going consultant services. Once the individual is determined to be eligible for mi via services, the consultant service provider will continue to render consultant services to the newly enrolled eligible recipient as set forth in the consultant service standards.

C. Consultant

services: Consultant services are required for all mi via eligible recipients to educate, guide, and assist the eligible recipients to make informed planning decisions about services and supports. The consultant helps the eligible recipient develop the SSP based on his or her assessed needs. The consultant assists the eligible recipient with implementation and quality assurance related to the SSP and AAB. Consultant services help the eligible recipient identify supports, services and goods that meet his or her needs, meet the mi via requirements and are covered mi via services. Consultant services provide support to eligible recipients to maximize their ability to self-direct their mi via services.

(1) Contact requirements: Consultant providers shall make contact with the eligible recipient in person or by telephone at least monthly for a routine follow-up. Consultant providers shall meet face-to-face with the eligible recipient at least quarterly; one visit must be conducted in the eligible recipient's home at least annually. During monthly contact the consultant:

(a) reviews the eligible recipient's access to services and whether they were furnished per the SSP;

(b) reviews the eligible recipient's exercise of free choice of provider;

(c) reviews whether services are meeting the eligible recipient's needs;

(d) reviews whether the eligible recipient is receiving access to non-waiver services per the SSP;

(e) reviews activities conducted by the support guide, if utilized;

(f) documents changes in status;

(g) monitors the use and effectiveness of the emergency back-up plan;

(h) documents and provides follow up, if necessary, if challenging events occur that prevent the implementation of the SSP;

(i) assesses for suspected abuse, neglect, or exploitation and report accordingly; if not reported, takes remedial action to ensure correct reporting;

(j) documents progress of any time sensitive activities outlined in the SSP;

(k) determines if health and safety issues are being addressed appropriately; and

(l) discusses budget utilization concerns.

(2) Quarterly visits will be conducted for the following purposes:

(a) review and document progress on

implementation of the SSP;

(b) document usage and effectiveness of the emergency backup plan;

(c) review SSP and budget spending patterns (over and under-utilization);

(d) assess quality of services, supports and functionality of goods in accordance with the quality assurance section of the SSP and any applicable sections of the mi via rules and service standards;

(e) document the eligible recipient's access to related goods identified in the SSP;

(f) review any incidents or events that have impacted the eligible recipient's health, welfare or ability to fully access and utilize support as identified in the SSP; and

(g) other concerns or challenges, including but not limited to complaints, eligibility issues, and health and safety issues, raised by the eligible recipient, authorized representative or personal representative.

(3) Change of consultants: Consultants are responsible for assisting eligible recipients to transition to another consultant provider when requested. Transition from one consultant provider to another can only occur at the first of the month.

(4) Critical incident management responsibilities and reporting requirements: The consultant provider shall report incidents of abuse, neglect, exploitation, suspicious injury, environmental hazards, and eligible recipient death as directed by the appropriate state agency(ies). The consultant provider shall provide training to eligible recipients EOR, authorized representatives or other designated individuals regarding recognizing and reporting critical incidents. Critical incidents include abuse, neglect, exploitation, suspicious injury, environmental hazards and eligible

recipient deaths. The consultant provider shall maintain a critical incident management system to identify, report, and address critical incidents. The consultant provider is responsible for follow-up and assisting the eligible recipient to help ensure health and safety when a critical incident has occurred. Critical incident reporting requirements for mi via eligible recipients who have been designated with an ICF/IID LOC, critical incidents should be directed in the following manner.

(a) DOH triages, and investigates all reports of alleged abuse, neglect, exploitation, suspicious injury, environmental hazards, and eligible recipient deaths for mi via services and eligible recipients to include expected and unexpected deaths. The reporting of these critical incidents is mandated for all those providing mi via services pursuant to 7.1.14 NMAC. Any critical incidents must be reported to the children, youth and families department (CYFD) child protective services (CPS) or the DOH division of health improvement (DHI) incident management bureau (IMB) for eligible recipients under 18 years. For eligible recipient's 18 years and older, IMB is contacted to report any critical incidents. The reporter must then fax DHI the abuse, neglect and exploitation or report of death form within 24 hours of a verbal report. If the reporter has internet access, the report form shall be submitted via DHI's website. Anyone may report an incident; however, the person with the most direct knowledge of the incident is the individual who is required to report the incident.

(b) With respect to mi via services provided by any employee, contractor, vendor or other community-based waiver service agency having a provider agreement with DOH, any suspected abuse, neglect, exploitation, suspicious injury, environmental hazard, eligible recipient death must be reported to the CYFD/ CPS or DOH/DHI/IMB for the eligible recipient under 18 years or to IMB for eligible recipients age

18 years or older. See Sections 27-7-14 through 27-7-31 NMSA 1978 (Adult Protective Services Act) and in Sections 32A-4-1 through 32A-4-34 NMSA 1978 (Child Abuse and Neglect Act).

(5)

Conflict of interest: An eligible recipient’s consultant may not serve as the eligible recipient’s EOR, authorized representative or personal representative for whom he or she is the consultant. A consultant may not be paid for any other services utilized by the eligible recipient for whom he or she is the consultant, whether as an employee of the eligible recipient, a vendor, an employee or subcontractor of an agency. A consultant may not provide any other paid mi via services to an eligible recipient unless the recipient is receiving consultant services from another agency. The consultant agency may not provide any other direct services for an eligible recipient that has an approved SSP, an approved budget, and is actively receiving services in the mi via program. The consultant agency may not employ as a consultant any immediate family member or guardian for an eligible recipient of the mi via program that is served by the consultant agency. A consultant agency may not provide guardianship services to an eligible recipient receiving consultant services from that same agency. The consultant agency may not provide any direct support services through any other type of 1915 (c) Home and Community Based Waiver Program. A consultant agency shall not engage in any activities in their capacity as a provider of services to an eligible recipient that may be a conflict of interest. As such a consultant agency shall not hold a business or financial interest in an affiliated agency that is paid to provide direct care for any individuals receiving mi via services. An affiliated agency is defined as a direct service agency providing mi via services that has a marital, domestic partner, blood, business interest or holds financial interest in providing direct care for individuals receiving mi via services. Affiliated agencies

must not hold a business or financial interest in any entity that is paid to provide direct care for any individuals receiving HCBS services. Any direct service agency or consultant agency that has been referred to the DOH internal review committee (IRC) or is on a moratorium will not be approved to provide mi via services.

D. Personal plan

facilitation: Personal plan facilitation supports planning activities that may be used by the eligible recipient to develop his or her SSP as well as identify other sources of support outside the SSP process. This service is available to an eligible recipient one time per budget year.

(1) In

the scope of personal planning facilitation, the personal plan facilitator will:

(a)

meet with the eligible recipient and his or her family (or authorized representative, or personal representative as appropriate) prior to the personal planning session to discuss the process, to determine who the eligible recipient wishes to invite, and determine the most convenient date, time and location; this meeting preparation shall include an explanation of the techniques the facilitator is proposing to use or options if the facilitator is trained in multiple techniques; the preparation shall also include a discussion of the role the eligible recipient prefers to play at the planning session, which may include co-facilitation of all or part of the session;

(b)

arrange for participation of invitees and location;

(c)

conduct the personal planning session;

(d)

document the results of the personal planning session and provide a copy to the eligible recipient, his or her authorized representative, or personal representative, the consultant and any other parties the eligible recipient would like to receive a copy.

(2) Elements

of this report shall include:

(a)

recommended services to be included in the SSP;

(b)

services from sources other than MAD to aid the eligible recipient;

(c)

long-term goals the eligible recipient wishes to pursue;

(d)

potential resources, especially natural supports within the eligible recipient’s community that can help the eligible recipient to pursue his or her desired outcomes(s)/goal(s); and

(e)

a list of any follow-up actions to take, including timelines.

(3) Provide

session attendees, including the eligible recipient, with an opportunity to provide feedback regarding the effectiveness of the session.

E. Living supports:

Living supports are provided in the individual’s own home or in the community and may not be provided in residential facilities or agency owned homes.

(1)

Homemaker direct support services: Homemaker direct support services are provided on an episodic or continuing basis to assist an eligible recipient 21 years and older with activities of daily living, performance of general household tasks, and enable the eligible recipient to accomplish tasks he or she would normally do for himself or herself if he or she did not have a disability. Homemaker direct support services are provided in the eligible recipient’s own home and in the community, depending on the eligible recipient’s needs. The eligible recipient identifies the homemaker direct support worker’s training needs, and, if the eligible recipient is unable to do the training for him or herself, the eligible recipient arranges for the needed training. Services are not intended to replace supports available from a primary caregiver. Personal care services are covered under the medicaid state plan as enhanced early and periodic screening, diagnostic and treatment (EPSDT) benefits for mi via

eligible recipients under 21 years of age and are not to be included in an eligible recipient's AAB.

(2) Home

health aide services: Home health aide services provide total care or assist an eligible recipient 21 years and older in all activities of daily living. Home health aide services assist the eligible recipient in a manner that will promote an improved quality of life and a safe environment for the eligible recipient. Home health aide services can be provided in the eligible recipient's own home and outside the eligible recipient's home. ~~[The medicaid state plan home health aide services are intermittent and are provided primarily on a short-term basis. Mi via home health aide services are hourly services for eligible recipients who need this service on a more long-term basis.]~~ Home health aide services under the waiver differ in nature, scope, supervisory arrangements, or provider type from home health aide services in the state plan. Home health aide services under the waiver provide total care or assistance to a recipient in all activities of daily living in a manner that will promote an improved quality of life and a safe environment to support the recipient's independence and health needs in the home and in the community. Home health aide services can be provided on a long-term basis for the recipient's habilitative supports whereas, state plan home health aide services address acute conditions; the purpose of which is curative and restorative, with the goal of assisting the recipient to return to an optimum level of functioning and to facilitate timely discharge of the recipient to self-care or to care by his or her family. Home health aide services are not duplicative of homemaker services. Home health aides may provide basic non-invasive nursing assistant skills within the scope of their practice. Homemakers do not have this ability to perform such tasks. Home health aides are supervised by a RN. Supervision must occur at least once every 60 calendar days in the eligible recipient's home and be in accordance

with the New Mexico Nurse Practice Act, Section 61-3-4 *et seq.*, NMSA 1978.

(3) In-home

living supports: In-home living supports are related to the eligible recipient's qualifying condition or disability and enable him or her to live in his or her apartment or house. Services must be provided in the home or apartment owned or leased by the eligible recipient or in the eligible recipient's home, not to include homes or apartments owned by agency providers. Service coordination and nursing services are not included in this service.

(a)

These services and supports are provided in the eligible recipient's own home and are individually designed to instruct or enhance home living skills as well as address health and safety.

(b)

In-home living supports include assistance with activities of daily living and assistance with the acquisition, restoration, or retention of independent living skills. This service is provided on a regular basis at least four or more hours per day one or more days per week and may be up to 24 hours per day as specified in the eligible recipient's SLRISP.

(c)

Eligible recipients receiving in-home living supports may not use homemaker and direct support home health aide services or respite because they duplicate in-home living supports.

F. Community

membership supports:

(1)

Community direct support:

Community direct support providers deliver support to the eligible recipient to identify, develop and maintain community connections and access social and educational options. This service does not include formal educational (including home schooling and tutoring related activities), or vocational services related to traditional academic subjects or vocational training.

(a)

The community direct support provider may be a skilled independent contractor or a hired employee depending on the level of support needed by the eligible recipient to access the community.

(b)

The community direct support provider may instruct and model social behavior necessary for the eligible recipient to interact with community members or in groups, provide assistance in ancillary tasks related to community membership, provide attendant care and help the eligible recipient schedule, organize and meet expectations related to chosen community activities.

(c)

Community direct support services include:

(i)

provide assistance to the eligible recipient outside of his or her residence;

(ii)

promote the development of social relationships and build connections within local communities;

(iii)

support the eligible recipient in having frequent opportunities to expand roles in the community to increase and enhance natural supports, networks, friendships and build a sense of belonging; and

(iv)

assist in the development of skills and behaviors that strengthen the eligible recipient's connection with his or her community.

(d)

The skills to assist someone in a community setting may be different than those for assisting an eligible recipient at home. The provider will:

(i)

demonstrate knowledge of the local community and resources within that community that are identified by the eligible recipient on the SSP; and

(ii)

be aware of the eligible recipient's barriers to communicating and maintaining health and safety while in the community setting.

(2)
Employment supports: The objective of employment supports services is to provide assistance that will result in community employment jobs for an eligible recipient which increases economic independence, self-reliance, social connections and the ability to grow within his or her career. Employment supports services are geared to place and support an eligible recipient with disabilities in competitive, integrated employment settings with non-disabled co-workers within the general workforce; or assist the eligible recipient in business ownership. Employment supports include job development and job coaching supports after available vocational rehabilitation supports have been exhausted, including programs funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (IDEA) to an eligible recipient. Employment Services are to be individualized to meet the needs of the [participant] recipient and not the needs of a group.

(a)
 Job development is a service provided to an eligible recipient by a skilled individual. The service has several components:

(i) conducting situational and or vocational assessments;

(ii) developing and identifying community based job opportunities that are in line with the eligible recipient's skills and interests;

(iii) supporting the eligible recipient in gainful skills or knowledge to advocate for his or herself in the workplace;

(iv) promoting career exploration for the eligible recipient based on interests within various careers through job sampling, job trials or other assessments as needed;

(v) arranging for or providing benefits counseling;

(vi) facilitating job accommodations

and use of assistive technology such as communication devices for the eligible recipient's use;

(vii) providing job site analysis (matching workplace needs with those of the eligible recipient); and

(viii) assisting the eligible recipient in gaining or increasing job seeking skills (interview skills, resume writing, work ethics, etc.).

(b)
 The job coach provides the following services:

(i) training the eligible recipient to perform specific work tasks on the job;

(ii) vocational skill development to the eligible recipient;

(iii) employer consultation specific to the eligible recipient;

(iv) eligible recipient co-worker training;

(v) job site analysis for an eligible recipient;

(vi) education of the eligible recipient and co-workers on rights and responsibilities;

(vii) assistance with or utilization of community resources to develop a business plan if the eligible recipient elects to start his or her own business;

(viii) conduct market analysis and establish the infrastructure to support a business specific for the eligible recipient; and

(ix) increasing the eligible recipient's capacity to engage in meaningful and productive interpersonal interactions co-workers, supervisors and customers.

(c)
 Employment supports will be provided by staff at current or potential work sites. When employment services are provided at a work site where persons without disabilities are employed, payment is made only for the adaptations;

supervision and training required by the eligible recipient receiving mi via services as a result of his or her disabilities but does not include payment for the supervisory activities rendered as a normal part of the business setting. Federal financial participation (FFP) is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

(i) incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;

(ii) payments that are passed through to users of supported employment programs; or

(iii) payments for training that is not directly related to the eligible recipient's supported employment program; and

(iv) FFP cannot be claimed to defray expenses associated with an eligible recipient's start-up or operation of his or her business.

(3)
Customized community group supports: Customized community group supports can include participation in congregate community day programs and community centers that offer functional meaningful activities that assist with acquisition, retention, or improvement in self-help, socialization and adaptive skills for an eligible recipient. Customized community group supports may include adult day habilitation programs, and other day support models. Customized community group supports are provided in integrated community settings such as day programs and community centers which can take place in non-institutional and non-residential settings. These services are available at least four or more hours per day one or more days per week. Service hours and days are specified in the eligible recipient's SSP.

G. Health and wellness:

(1)
Extended skilled therapy for eligible recipients 21 years and older: Extended skilled therapy for adults may include physical therapy, occupational therapy or speech language therapy when skilled therapy services under the medicaid state plan are exhausted or are not a covered benefit. Eligible recipients 21 years and older in the mi via program access therapy services under the state medicaid plan for acute and temporary conditions that are expected to improve significantly in a reasonable and generally predictable period of time. Therapy services provided to eligible recipients 21 years and older in the mi via program focus on improving functional independence, health maintenance, community integration, socialization, and exercise, or enhance support and normalization of family relationships.

(a)
Physical therapy: Diagnosis and management of movement dysfunction and the enhancement of physical and functional abilities. Physical therapy addresses the restoration, maintenance and promotion of optimal physical function, wellness and quality of life related to movement and health. Physical therapy activities do the following:

- (i) increase, maintain or reduce the loss of functional skills;
- (ii) treat a specific condition clinically related to the eligible recipient's disability;
- (iii) support the eligible recipient's health and safety needs; or
- (iv) identify, implement, and train on therapeutic strategies to support the eligible recipient and his or her family or support staff consistent with the eligible recipient's SSP desired outcomes and goals.

(b)
Occupational therapy: Diagnosis, assessment, and management of functional limitations intended to assist the eligible recipient to regain,

maintain, develop, and build skills that are important for independence, functioning, and health. Occupational therapy services typically include:

- (i) customized treatment programs to improve the eligible recipient's ability to perform daily activities;
- (ii) comprehensive home and job site evaluations with adaptation recommendations;
- (iii) skills assessments and treatment;
- (iv) assistive technology recommendations and usage training;
- (v) guidance to family members and caregivers;
- (vi) increasing or maintaining functional skills or reducing the loss of functional skills;
- (vii) treating specific conditions clinically related to the eligible recipient's developmental disability;
- (viii) support for the eligible recipient's health and safety needs; and
- (ix) identifying, implementing, and training therapeutic strategies to support the eligible recipient and his or her family or support staff consistent with the eligible recipient's SSP desired outcomes and goals.

(c)
Speech and language pathology: Diagnosis, counseling and instruction related to the development and disorders of communication including speech fluency, voice, verbal and written language, auditory comprehension, cognition, swallowing dysfunction, oral pharyngeal or laryngeal, and sensor motor competencies. Speech language pathology is also used when an eligible recipient requires the use of an augmentative communication device. Based upon therapy goals, services may be delivered in an integrated natural setting, clinical setting or in a group. Services are intended to:

- (i) improve or maintain the eligible recipient's capacity for successful communication or to lessen the effects of the loss of communication skills; or
 - (ii) improve or maintain the eligible recipient's ability to eat foods, drink liquids, and manage oral secretions with minimal risk of aspiration or other potential injuries or illness related to swallowing disorders;
 - (iii) provide consultation on usage and training for augmentative communication devices;
 - (iv) identify, implement and train therapeutic strategies to support the eligible recipient and his or her family or support staff consistent with the eligible recipient's SSP desired outcomes and goals.
- (d)
Behavior support consultation: Behavior support consultation services consist of functional support assessments, positive behavior support plan that is part of the eligible recipient's treatment plan development, and training and support coordination for the eligible recipient's related to behaviors that compromise the eligible recipient's quality of life. Based on the eligible recipient's SSP, services are delivered in an integrated, natural setting, or in a clinical setting. Behavior support consultation:
- (i) informs and guides the eligible recipient's service and support employees or vendors toward understanding the contributing factors to the eligible recipient's behavior;
 - (ii) identifies support strategies to ameliorate contributing factors with the intention of enhancing functional capacities, adding to the provider's competency to predict, prevent and respond to interfering behavior and potentially reducing interfering behavior(s);
 - (iii) supports effective implementation based on a functional assessment and support plans;

(iv) collaborates with medical and ancillary therapies to promote coherent and coordinated services addressing behavioral issues, and to limit the need for psychotherapeutic medications; and

(v) monitors and adapts support strategies based on the response of the eligible recipient and his or her service and support providers in order for services to be provided in the least restrictive manner; HSD does not allow the use of any restraints, restrictive interventions, or seclusion to an eligible recipient.

(e) **Nutritional counseling:** Nutritional counseling services include assessment of the eligible recipient's nutritional needs, development or revision of the eligible recipient's nutritional plan, counseling and nutritional intervention and observation and technical assistance related to implementation of the nutritional plan.

(f) **Private duty nursing for adults:** Private duty nursing for eligible recipients 21 years or older includes activities, procedures, and treatment for the eligible recipient's physical condition, physical illness or chronic disability. Services include medication management, administration and teaching, aspiration precautions, feeding tube management, gastrostomy and jejunostomy care, skin care, weight management, urinary catheter management, bowel and bladder care, wound care, health education, health screening, infection control, environmental management for safety, nutrition management, oxygen management, seizure management and precautions, anxiety reduction, staff supervision, behavior and self-care assistance.

(2) **Specialized therapies:** Specialized therapies are non-experimental therapies or techniques that have been proven effective for certain conditions. Experimental or investigational procedures,

(iv) technologies or therapies and those services covered as a medicaid state plan benefit are excluded. Services in this category include the following therapies:

(a) **Acupuncture:** Acupuncture is a distinct system of primary health care with the goal of prevention, cure, or correction of any disease, illness, injury, pain or other physical or behavioral health condition by controlling and regulating the flow and balance of energy, form and function to restore and maintain physical health and increased mental clarity. Acupuncture may provide effective pain control, decreased symptoms of stress, improved circulation and a stronger immune system, as well as other benefits. See 16.2.1 NMAC.

(b) **Biofeedback:** Biofeedback uses visual, auditory or other monitors to provide eligible recipients with physiological information of which they are normally unaware. This technique enables an eligible recipient to learn how to change physiological, psychological and behavioral responses for the purposes of improving emotional, behavioral, and cognitive health performance. The use of biofeedback may assist in strengthening or gaining conscious control over the above processes in order to self-regulate. Biofeedback therapy is also useful for muscle re-education of specific muscle groups or for treating pathological muscle abnormalities of spasticity, incapacitating muscle spasm, or weakness.

(c) **Chiropractic:** Chiropractic care is designed to locate and remove interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the vertebral column and pelvis, for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, adjustment and manipulation of the human structure. Chiropractic therapy may positively affect

neurological function, improve certain reflexes and sensations, increase range of motion, and lead to improved general health. See 16.4.1 NMAC.

(d) **Cognitive rehabilitation therapy:** Cognitive rehabilitation therapy services are designed to improve cognitive functioning by reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems. Treatments may be focused on improving a particular cognitive domain such as attention, memory, language, or executive functions. Alternatively, treatments may be skill-based, aimed at improving performance of activities of daily living. The overall goal is to restore function in a cognitive domain or set of domains or to teach compensatory strategies to overcome an eligible recipient's specific cognitive problems.

(e) **Hippotherapy:** Hippotherapy is a physical, occupational, and speech-language therapy treatment strategy that utilizes equine movement as part of an integrated intervention program to achieve functional outcomes. Hippotherapy applies multidimensional movement of a horse for an eligible recipient with movement dysfunction and may increase mobility and range of motion, decrease contractures and aid in normalizing muscle tone. Hippotherapy requires that the eligible recipient use cognitive functioning, especially for sequencing and memory. An eligible recipient with attention deficits and behavior problems are redirecting attention and behaviors by focusing on the activity. Hippotherapy involves therapeutic exercise, neuromuscular education, kinetic activities, therapeutic activities, sensory integration activities, and individual speech therapy. The activities may also help improve respiratory function and assist with improved breathing and speech production. Hippotherapy must be performed by a RLD licensed

physical therapist, occupational therapist, or speech therapist.

(f)

Massage therapy: Massage therapy is the assessment and treatment of soft tissues and their dysfunctions for therapeutic purposes primarily for comfort and relief of pain. It includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, stretching the tissue and exercising the range of motion, and may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Massage increases the circulation, helps loosen contracted, shortened muscles and can stimulate weak muscles to improve posture and movement, improves range of motion and reduces spasticity. Massage therapy may increase, or help sustain, an eligible recipient's ability to be more independent in the performance of activities of daily living; thereby, decreasing dependency upon others to perform or assist with basic daily activities. See 16.7.1 NMAC.

(g)

Naprapathy: Naprapathy focuses on the evaluation and treatment of neuromusculoskeletal conditions, and is a system for restoring functionality and reducing pain in muscles and joints. The therapy uses manipulation and mobilization of the spine and other joints, and muscle treatments such as stretching and massage. Based on the concept that constricted connective tissue (ligaments, muscles, and tendons) interfere with nerve, blood, and lymph flow, naprapathy uses manipulation of connective tissue to open these channels of body function. See 16.6.1 NMAC.

(h)

Native American healers: Native American healing therapies encompass a wide variety of culturally-appropriate therapies that support eligible recipients in their communities by addressing their physical, emotional and spiritual health. Treatments may include prayer, dance, ceremony, song, plant medicines, foods, participation in sweat lodges, and the use of meaningful symbols of healing, such as the medicine wheel or other sacred objects.

(i)

Play therapy: Play therapy is a variety of play and creative arts techniques utilized to alleviate chronic, mild and moderate psychological and emotional conditions for an eligible recipient that are causing behavioral problems or are preventing the eligible recipient from realizing his or her potential. The play therapist works integratively using a wide range of play and creative arts techniques, mostly responding to the eligible recipient's direction.

H. Other supports:

(1)

Transportation: Payment for transportation is limited to the costs of transportation needed to access waiver services, activities, and resources identified in the recipient's SSP. Transportation services are offered to enable eligible recipients to gain access to services, activities, and resources, as specified by the SSP. Transportation services under the waiver are offered in accordance with the eligible recipient's SSP. Transportation services provided under the waiver are non-medical in nature whereas transportation services provided under the medicaid state plan are to transport eligible recipients to medically necessary physical and behavioral health services. Non-medical transportation services enable recipients to gain access to waiver and non-medical community services, events, activities and resources as specified in the recipient's SSP related to community resources and services, work, volunteer sites, homes of local family or friends, civic organizations or social clubs, public meetings or other civic activities, and spiritual activities or events. Payment for via transportation services is made to the eligible recipient's individual transportation employee or to a public or private transportation service vendor. Payment cannot be made to the eligible recipient. Whenever possible, family, neighbors, friends, or community agencies that can provide this service without charge shall be identified in the SSP and utilized. ~~[Transportation services for~~

~~minors are not a covered service as these are services that a LRI would ordinarily provide for household members of the same age who do not have a disability or chronic illness.] Transportation services for minors cannot be provided by a LRI as these are services a LRI would ordinarily provide for household members of the same age who do not have a disability of chronic illness.~~

(2)

Emergency response services:

Emergency response services provide an electronic device that enables the eligible recipient to secure help in an emergency at home and avoid institutionalization. The eligible recipient may also wear a portable help button to allow for mobility. The system is connected to the eligible recipient's phone and programmed to signal a response center when a help button is activated. The response center is staffed by trained professionals. Emergency response services include:

(a)

testing and maintaining equipment;

(b)

training eligible recipients, caregivers and first responders on use of the equipment;

(c)

24-hour monitoring for alarms;

(d)

checking systems monthly or more frequently, if warranted by electrical outages, severe weather, etc.;

(e)

reporting emergencies and changes in the eligible recipient's condition that may affect service delivery; and

(f)

ongoing emergency response service is covered, but initial set up and installation is not.

(3) **Respite:**

Respite is a flexible family support service, the primary purpose of which is to ~~[give the primary, unpaid caregiver time away from his or her duties]~~ provide intermittent support to the recipient and give the unpaid primary caregiver relief from his or her duties on a short-term basis. Respite is provided on a short-term basis to allow the recipient's primary

unpaid caregiver a limited leave of absence in order to reduce stress, accommodate a caregiver illness, or meet a sudden family crisis or emergency. Services must only be provided on an intermittent or short-term basis because of the absence or need for relief of those persons normally providing care to the recipient. If there is a paid primary caregiver residing with the eligible recipient providing living supports or community membership supports, or both, respite services cannot be utilized. Respite services include assisting the eligible recipient with routine activities of daily living (e.g., bathing, toileting, preparing or assisting with meal preparation and eating), enhancing self-help skills, and providing opportunities for leisure, play and other recreational activities; assisting the eligible recipient to enhance self-help skills, leisure time skills and community and social awareness; providing opportunities for community and neighborhood integration and involvement; and providing opportunities for the eligible recipient to make his or her own choices with regard to daily activities. Respite services are furnished on a short-term basis and can be provided in the eligible recipient's home, the provider's home, in a community setting of the family's choice (e.g., community center, swimming pool and park) or at a center in which other individuals are provided care. FFP is not claimed for the cost of room and board as part of respite services. Respite cannot be used for purposes of day-care nor can it be provided to school age children during school (including home school) hours.

(4) ~~[Related goods]~~ **Individual directed goods and services:** ~~[Related goods]~~ Individual directed goods and services are equipment, supplies or ~~[fees and memberships]~~ services, not otherwise provided through mi via, the medicaid state plan, or medicare. ~~[Related goods]~~ Individual directed goods and services must directly relate to the member's qualifying condition or disability. ~~[Related goods]~~

Individual directed goods and services must explicitly address a clinical, functional, medical, or habilitative need and:

- (a) ~~[Related goods]~~ Individual directed goods and services must address a need identified in the eligible recipient's SSP and meet the following requirements:
 - (i) supports the eligible recipient to remain in the community and reduces the risk for institutionalization; and
 - (ii) promote personal safety and health; and afford the eligible recipient an accommodation for greater independence; and
 - (iii) decrease the need for other medicaid services; and
 - (iv) accommodate the eligible recipient in managing his or her household ~~[or]~~ or facilitate activities of daily living. ~~[or]~~ facilitate activities of daily living.

(b) ~~[Related goods]~~ Individual directed goods and services must be documented in the SSP, comply with Subsection D of 8.314.6.17 NMAC, and be approved by the TPA. The cost and type of related good is subject to approval by the TPA. Eligible recipients are not guaranteed the exact type and model of ~~[related good]~~ individual directed good or service that is requested. If the eligible recipient requests a good or service, the consultant TPA and MAD can work with the eligible recipient to find other, including less costly, alternatives.

(c) The ~~[related goods]~~ individual directed goods and services must not be available through another source and the eligible recipient must not have the personal funds needed to purchase the goods or services.

(d) These items are purchased from the eligible recipient's AAB and advance outcomes in the eligible recipient's SSP.

(e) Experimental or prohibited treatments and goods are excluded.

(f) Services and goods that are recreational or diversional in nature are excluded. Recreational and diversional in nature is defined as inherently and characteristically related to activities done for enjoyment.

(g) Goods and services purchased under this coverage may not circumvent other restrictions on the claiming of federal financial participation (FFP) for waiver services.

(5) **Environmental modifications:** Environmental modification services include the purchase and installation of equipment or making physical adaptations to the eligible recipient's residence that are necessary to ensure the health, safety, and welfare of the eligible recipient or enhance the eligible recipient level of independence.

(a) Singular or in combination of adaptations include:

- (i) the installation of ramps ~~[and grab bars]~~;
- (ii) widening of doorways and hallways;
- (iii) installation of specialized electric and plumbing systems to accommodate medical equipment and supplies;
- (iv) installation of lifts or elevators; modifications of a bathroom facility, such as roll-in showers, sink, bathtub, and toilet modifications, water faucet controls, floor urinals, bidet adaptations and plumbing;
- (v) turnaround space adaptations;
- (vi) specialized accessibility and safety adaptations or additions;
- (vii) trapeze and mobility tracks for home ceilings; automatic door openers and doorbells;
- (viii) voice-activated, light-activated,

motion-activated, and other such electronic devices;

(ix) fire safety adaptations;

(x) air filtering devices; heating and cooling adaptations;

(xi) glass substitute for windows and doors;

(xii) modified switches, outlets or environmental controls for home devices; and alarm and alert systems or signaling devices.

(b) All services shall be provided in accordance with applicable federal, state, and local building codes.

(c) Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the eligible recipient, such as fences, storage sheds or other outbuildings. Adaptations that add to the total square footage of the home are excluded from this benefit except when necessary to complete an adaptation.

(d) The environmental modification provider must:

(i) ensure proper design criteria is addressed in the planning and design of the adaptation;

(ii) be a licensed and insured contractor or approved vendor that provides construction and remodeling services;

(iii) provide administrative and technical oversight of construction projects;

(iv) provide consultation to family members, mi via providers and contractors concerning environmental modification projects to the eligible recipient's residence; and

(v) inspect the final environmental modification project to ensure that the adaptations meet the approved plan submitted for environmental adaptation.

(e) Environmental modifications are managed by professional staff available to provide technical assistance and oversight to environmental modification projects.

(f) Environmental modification services are limited to \$5,000 every five years. An eligible recipient transferring into the mi via program will carry his or her history for the previous five years of MAD reimbursed environmental modifications. Environmental modifications must be approved by the TPA.

(g) Environmental modifications are paid from a funding source separate from the AAB.
[8.314.6.15 NMAC - Rp, 8.314.6.15 NMAC, 3/1/2016; A, 11/1/2018]

8.314.6.16 NON-COVERED SERVICES: The waiver does not pay for the purchase of goods or services that a household without a person with a disability would be expected to pay for as a routine household or personal expense. Non-covered services include, but are not limited to the following:

A. services covered by the medicaid state plan (including EPSDT), MAD school-based services, medicare and other third-parties; the TPA may verify that a good or service is not covered by another payor source by requesting a denial letter;

B. any service or good, the provision of which would violate federal or state statutes, regulations, rules or guidance;

C. formal academic degrees or certification-seeking education, educational services covered by IDEA or vocational training provided by the public education department (PED), division of vocational rehabilitation (DVR);

D. food and shelter expenses:

(1) including property-related costs, such as rental or purchase of real estate and furnishing, maintenance, utilities and utility deposits; and

(2) related

administrative expenses; utilities include gas, electricity, propane, fire wood, wood pellets, water, sewer, and waste management;

E. experimental or investigational services, procedures or goods, as defined in [8:325-6] 8.310.2 NMAC;

F. home schooling materials or related supplemental materials and activities;

G. any goods or services that are considered [primarily] recreational or diversional in nature as defined in Subparagraph (f) of Paragraph (4) of Subsection (H) of 8.314.6.15 NMAC including but not limited to tickets for movies, theatrical and musical performances, sporting events, zoos, or museums;

H. personal goods or items not related to the disability;

I. animals and costs of maintaining animals including the purchase of food, veterinary visits, grooming and boarding but with the exception of training and certification for service dogs;

J. gas cards and gift cards;

K. purchase of insurance, such as car, cell phone, health, life, burial, renters, home-owners, service warrantees or other such policies;

L. purchase of a vehicle, and long-term lease or rental of a vehicle;

M. purchase of recreational vehicles, such as motorcycles, campers, boats or other similar items;

N. firearms, ammunition or other weapons;

O. gambling, games of chance (such as bingo or lottery), alcohol, tobacco, or similar items;

P. vacation expenses, including airline tickets, cruise ship or other means of transport, guided tours, meals, hotel, lodging or similar recreational expenses; mileage or driver time reimbursement for vacation travel by automobile;

Q. purchase of usual and customary furniture and home furnishings, *unless* adapted to the eligible recipient's disability or

use, or of specialized benefit to the eligible recipient's condition; requests for adapted or specialized furniture or furnishings must include a recommendation from the eligible recipient's health care provider and, when appropriate, a denial of payment from any other source;

R. regularly scheduled upkeep, maintenance and repairs of a home and addition of fences, storage sheds or other outbuildings, *except* upkeep and maintenance of modifications or alterations to a home which are an accommodation directly related to the eligible recipient's qualifying condition or disability;

S. regularly scheduled upkeep, maintenance and repairs of a vehicle, or tire purchase or replacement, *except* upkeep and maintenance of modifications or alterations to a vehicle or van, which is an accommodation directly related to the eligible recipient's qualifying condition or disability; requests must include documentation that the adapted vehicle is the eligible recipient's primary means of transportation;

T. clothing and accessories, except [specialized] adaptive clothing or accessories based on the eligible recipient's disability or condition;

U. training expenses for paid employees;

V. conference or class fees may be covered for eligible recipients or unpaid caregivers, but costs associated with such conferences or class cannot be covered, including airfare, lodging or meals;

W. consumer electronics such as computers, including laptops or any electronic tablets, printers and fax machines, or other electronic equipment that does not meet the criteria specified in Subsection A of 8.314.6.15 NMAC; no more than one of each type of item may be purchased at one time; and consumer electronics may not be replaced more frequently than once every three years; an eligible recipient transferring into the mi via program will carry his or her history

for the previous three years of MAD reimbursed consumer electronics;

X. cell phone services that include more than one cell phone line per eligible recipient; cell phone service, including cell phone service that includes data, is limited to the cost of one hundred dollars per month;

Y. dental services utilizing mi via individual budgetary allotments.

[8.314.6.16 NMAC - Rp, 8.314.6.16 NMAC, 3/1/2016; A, 11/1/2018]

8.314.6.17 SERVICE AND SUPPORT PLAN (SSP) AND AUTHORIZED ANNUAL BUDGET(AAB):

A SSP and an annual budget request are developed at least annually by the eligible recipient in collaboration with the eligible recipient's consultant and others that the eligible recipient invites to be part of the process. The consultant serves in a supporting role to the eligible recipient, assisting the eligible recipient to understand the mi via program, and with developing and implementing the SSP and the AAB. The SSP and annual budget request are developed and implemented as specified in 8.314.6 NMAC and mi via service standards and submitted to the TPA for final approval. Upon final approval the annual budget request becomes an AAB.

A. SSP development process: For development of the participant-centered service plan, the planning meetings are scheduled at times and locations convenient to the eligible recipient. This process obtains information about eligible recipient strengths, capacities, preferences, desired outcomes and risk factors through the LOC assessment and the planning process that is undertaken between the consultant and eligible recipient to develop his or her SSP. If the eligible recipient chooses to purchase personal plan facilitation services, that assessment information would also be used in developing the SSP.

(1)

Assessments:

(a)

Assessment activities that occur prior to the SSP meeting assist in the development of an accurate and functional plan. The functional assessments conducted during the LOC determination process address the following needs of a person: medical, behavioral health, adaptive behavior skills, nutritional, functional, community/social and employment; LOC assessments are conducted in person and take place in the eligible recipient's home, or in a HSD approved location.

(b)

Assessments occur on an annual basis or during significant changes in circumstance or at the time of the LOC determination. After the assessments are completed, the results are made available to the eligible recipient and his or her consultant for use in planning.

(c)

The eligible recipient and the consultant will assure that the SSP addresses the information and concerns, if any, identified through the assessment process.

(2) **Pre-**

planning:

(a)

The consultant contacts the eligible recipient upon his or her choosing enrollment in the mi via program to provide information regarding this program, including the range and scope of choices and options, as well as the rights, risks, and responsibilities associated with self-direction.

(b)

The consultant discusses areas of need to address on the eligible recipient's SSP. The consultant provides support during the annual re-determining process to assist with completing medical and financial eligibility in a timely manner.

(c)

Personal plan facilitators are optional supports. To assist in pre-planning, the eligible recipient is also able to access an approved provider to develop a personal plan.

(3) **SSP**

components: The SSP contains:

(a) the mi via services that are furnished to the eligible recipient, the projected amount, frequency and duration, and the type of provider who furnishes each service;

(i) the SSP must describe in detail how the services or goods relate to the eligible recipient's qualifying condition or disability;

(ii) the SSP must describe how the services and goods support the eligible recipient to remain in the community and reduce his or her risk of institutionalization; and

(iii) the SSP must specify the hours of services to be provided and payment arrangements;

(b) other services needed by the mi via eligible recipient regardless of funding source, including state plan services;

(c) informal supports that complement mi via services in meeting the needs of the eligible recipient;

(d) methods for coordination with the medicaid state plan services and other public programs;

(e) methods for addressing the eligible recipient's health care needs when relevant;

(f) quality assurance criteria to be used to determine if the services and goods meet the eligible recipient's needs as related to his or her qualifying condition or disability;

(g) information, resources or training needed by the eligible recipient and service providers;

(h) methods to address the eligible recipient's health and safety, such as emergency and back-up services; and

(i) the IBA.

(4) Service and support plan meeting:

(a) The eligible recipient receives an

LOC assessment and local resource manual prior to the SSP meeting.

(b) The eligible recipient may begin planning and drafting the SSP utilizing those tools prior to the SSP meeting.

(c) During the SSP meeting, the consultant assists the eligible recipient to ensure that the SSP addresses the eligible recipient's goals, health, safety and risks. The eligible recipient and his or her consultant will assure that the SSP addresses the information and concerns identified through the assessment process. The SSP must address the eligible recipient's health and safety needs before addressing other issues. The consultant ensures that:

(i) the planning process addresses the eligible recipient's needs and goals in the following areas: health and wellness and accommodations or supports needed at home and in the community;

(ii) services selected address the eligible recipient's needs as identified during the assessment process; needs not addressed in the SSP will be addressed outside the mi via program;

(iii) the outcome of the assessment process for assuring health and safety is considered in the plan;

(iv) services do not duplicate or supplant those available to the eligible recipient through the medicaid state plan or other programs;

(v) services are not duplicated in more than one service code;

(vi) job descriptions are complete for each provider and employee in the plan; a job description will include frequency, intensity and expected outcomes for the service;

(vii) the quality assurance section of the SSP is complete and specifies the roles of the eligible recipient, consultant and any others listed in this section;

(viii) the responsibilities are assigned for implementing the plan;

(ix) the emergency and back-up plans are complete; and

(x) the SSP is submitted to the TPA after the SSP meeting, in compliance with mi via rules and service standards.

B. Individual budgetary allotment (IBA): Each eligible recipient's annual IBA is determined by MAD or its designee as follows.

(1) Budgetary allotments are based on calculations developed by MAD for each mi via population group, utilizing historical traditional waiver care plan authorized budgets within the population, minus the case management costs, and minus a ten percent discount.

(2) The determination of each eligible recipient's sub-group is based on a comprehensive assessment. The eligible recipient then receives the IBA available to that category of need, according to the eligible recipient's age.

(3) An eligible recipient has the authority to expend the IBA through an AAB that is to be expended on a monthly basis and in accordance with the mi via rules and program service standards.

(a) ~~[The current mi via rate schedule, available on the HSD website under fee schedules as well as on the DOH website under mi via, shall be used as a guide in evaluating proposed payment rates for services that are currently covered or similar to currently covered services. The eligible recipient must justify in writing the rate that he or she wishes to pay when that rate exceeds the rate schedule. The eligible recipient must include this justification with the SSP and annual budget request when it is submitted for approval.]~~
The state and CMS approves a range of rates, as applicable, for mi via services wherein each recipient or EOR can self-direct and establish his or her own rate with a particular

provider of a service. The current rate schedule is available on the HSD and DOH websites. Mi via recipients, or EORs, are required to negotiate and determine the rate for their employees and services within the range of rates established by the state. Justification for paying more than the established rates must be submitted, in writing, to the TPA for consideration. The established rate may not be exceeded in order to pay for additional services the employee or provider may provide which are outside the scope of the specific service for which the employee or provider is approved; nor can a rate exception be approved for credentials that exceed those required to provide the service unless the credentials specifically meet criteria below. To exceed the established range of rates the following criteria must be met:

- (i) behavioral conditions: the recipient's behaviors are of a severity that pose considerable risk to the eligible recipient, caregivers or the community; and require a frequency and intensity of assistance to ensure the eligible recipient's health and safety in the home or the community or supervision or consultation requiring specialized or unique behavioral supports; these services cannot be accessed through other services; or
- (ii) medical conditions: the recipient has ongoing need for intense medical supports including oxygen monitoring, diabetic monitoring, skin breakdown, J and G tube feedings, ostomy and urology care, catheter insertion, digital extractions, suctioning, nebulizer treatments, routine order treatments in the prevention of infections, and responsive awareness to severe allergic reactions; or
- (iii) specialized supports: in order to support the recipient's inclusion in the community the recipient requires specialized support that can enhance communicative or functional skills such as american sign language

- or programming of adaptive communication devices; or
- (iv) location: the recipient lives in a geographic location, within New Mexico, with limited providers. The recipient, or guardian, has researched multiple providers and has been unable to identify another provider in the geographic location available to provide the service within the range of rates. The service goal must specify the recipient's need for this service and contact with available local provider within six months of the date of request including reason why alternate providers are not available.

(b) The AAB shall contain goods and services necessary for health and safety (i.e., direct care services and medically related goods) which will be given priority over goods and services that are non-medical or not directly related to health and safety. This prioritization applies to the IBA, AAB, and any subsequent modifications.

C. SSP review

criteria: Services and related goods identified in the eligible recipient's requested SSP may be considered for approval if the following requirements are met:

- (1) the services or goods must be responsive to the eligible recipient's qualifying condition or disability and must address the eligible recipient's clinical, functional, medical or rehabilitative needs; and
- (2) the services or goods must accommodate the eligible recipient in managing his or her household; or
- (3) the services or goods must facilitate activities of daily living; or
- (4) the services or goods must promote the eligible recipient's personal health and safety; and
- (5) the services or goods must afford the eligible recipient an accommodation for greater independence; and
- (6) the services or goods must support the

eligible recipient to remain in the community and reduce his/her risk for institutionalization; and

- (7) the services or goods must be documented in the SSP and advance the desired outcomes in the eligible recipient's SSP; and
 - (8) the SSP contains the quality assurance criteria to be used to determine if the service or goods meet the eligible recipient's need as related to the qualifying condition or disability; and
 - (9) the services or goods must decrease the need for other MAD services; and
 - (10) the eligible recipient receiving the services or goods does not have the funds to purchase the services or goods; or
 - (11) the services or goods are not available through another source; the eligible recipient must submit documentation that the services or goods are not available through another source, such as the medicaid state plan or medicare; and
 - (12) the service or good is not prohibited by federal regulations, NMAC rules, billing instructions, standards, and manuals; and
 - (13) each service or good must be listed as an individual line item whenever possible; however, when a service or a good are 'bundled' the SSP must document why bundling is necessary and appropriate.
- D. Budget review**
- criteria:** The eligible recipient's proposed annual budget request may be considered for approval, if all of the following requirements are met:
- (1) the proposed annual budget request is within the eligible recipient's IBA; and
 - (2) the proposed rate for each service is within the mi via range of rates for that chosen service; and
 - (3) the proposed cost for each good is reasonable, appropriate and reflects the lowest available cost for that chosen good; and

(4) the estimated cost of the service or good is specifically documented in the eligible recipient's budget worksheets; and

(5) no employee exceeds 40 hours paid work in a consecutive seven-day work week.

E. Modification of the SSP:

(1) The SSP may be modified based upon a change in the eligible recipient's needs or circumstances, such as a change in the eligible recipient's health status or condition or a change in the eligible recipient's support system, such as the death or disabling condition of a family member or other individual who was providing services.

(2) If the modification is to provide new or additional services than originally included in the SSP, these services must not be able to be acquired through other programs or sources. The eligible recipient must document the fact that the services are not available through another source.

(3) The eligible recipient must provide written documentation of the change in needs or circumstances as specified in the mi via service standards. The eligible recipient submits the documentation to the consultant. The consultant initiates the process to modify the SSP by forwarding the request for modification to the TPA for review.

(4) The SSP must be modified before there is any change in the AAB.

(5) The SSP may be modified once the original SSP has been submitted and approved. Only one SSP revision may be submitted at a time, e.g., a SSP revision may not be submitted if an initial SSP request or prior SSP revision request is under initial review by the TPA. This requirement also applies to any re-consideration of the same revision request. Other than for critical health and safety reasons, neither the SSP nor the AAB may be modified within 60 calendar days of expiration of the current SSP.

F. Modifications to the eligible recipient's annual budget: Revisions to the AAB may occur within the SSP year, and the eligible recipient is responsible for assuring that all expenditures are in compliance with the most current AAB in effect. The SSP must be amended first to reflect a change in the eligible recipient's needs or circumstances before any revisions to the AAB can be requested.

(1) Budget revisions involve requests to add new goods or services to a budget or to reallocate funds from any line item to another approved line item. Budget revisions must be submitted to the TPA for review and approval. Other than for critical health and safety reasons for the eligible recipient, budget revisions may not be submitted to the TPA for review within the last 60 calendar days of the budget year.

(2) The amount of the AAB cannot exceed the eligible recipient's annual IBA. The rare exception would be the eligible recipient whose assessed or documented needs, based on his or her qualifying condition, cannot be met within the annual IBA, in which case the eligible recipient would initiate a request for an adjustment through his or her consultant.

(3) Mi via budgets are developed by service. A recipient may request an increase to his or her budget above his or her annual IBA, or AAB, as applicable if services necessary for health and safety cannot be met within the IBA, or AAB. Prioritization, as described in Subparagraph (b) of Paragraph (3) of Subsection B of 8.314.6.17 NMAC applies. Requests for additional funding are built in the annual budget and are specific to the service that is being requested. If the eligible recipient requests an increase in his or her budget above his or her annual IBA, or AAB, as applicable, the eligible recipient must show at least one of the following four circumstances related to the specific service for which an increase to the additional funding is being requested:

(a) chronic physical condition: the eligible recipient has one or more chronic physical conditions, which are identified during the initial or reevaluation of the LOC, that result in a prolonged dependency on medical services or care, for which daily intervention is medically necessary; and the eligible recipient's needs cannot be met within the assigned IBA or other current resources, including natural supports, medicaid state plan services, medicare or other sources; the eligible recipient must submit a written, dated, and signed evaluation or letter from a medical doctor (MD), doctor of osteopathy (DO), a certified nurse practitioner (CNP) or a physician assistant (PA) that documents the chronic physical condition in the eligible recipient's health status relevant to the criteria; the evaluation or letter must have been completed after the last LOC assessment or less than one year from the date the request is submitted, whichever is most recent; the chronic physical conditions are characterized by at least one of the following:

(i) a life-threatening condition with frequent or constant periods of acute exacerbation that places the eligible recipient at risk for institutionalization; that could result in the eligible recipient's inability to remember to self-administer medications accurately even with the use of assistive technology devices; or that requires a frequency and intensity of assistance, supervision, or consultation to ensure the eligible recipient's health and safety in the home or in the community; or which, in the absence of such skilled intervention, assistance, medical supervision or consultation, would require hospitalization or admission to a NF or ICF-IID;

(ii) the need for administration of specialized medications, enteral feeding or treatments that are ordered by a medical doctor, doctor of osteopathy, certified nurse practitioner or physician's assistant; which require frequent and ongoing management or

monitoring or oversight of medical technology;

(b) **change in physical status:** the eligible recipient has experienced a deterioration or permanent change in his or her health status such that the eligible recipient's needs for services and supports can no longer be met within the IBA, current AAB or other current resources, including natural supports, medicaid state plan services, medicare or other sources; the eligible recipient must submit a written, dated, and signed evaluation or letter from a MD, OD, CNP, or PA that documents the change in the eligible recipient's health status relevant to the criteria; the evaluation or letter must have been completed after the last LOC assessment or less than one year from the date the request is submitted, whichever is most recent; the eligible recipient may submit additional supportive documentation by others involved in the eligible recipient's care, such as a current individual service plan (ISP) if the eligible recipient is transferring from another waiver, a recent evaluation from a specialist or therapist, a recent discharge plan, relevant medical records or other documentation or recent statements from family members, friends or other support individuals; types of physical health status changes that may necessitate an increase in the IBA or current AAB are as follows:

(i) the eligible recipient now requires the administration of medications via intravenous or injections on a daily or weekly basis;

(ii) the eligible recipient has experienced recent onset or increase in aspiration of saliva, foods or liquids;

(iii) the eligible recipient now requires external feedings, e.g. naso-gastric, percutaneous endoscopic gastrostomy, gastric-tube or jejunostomy-tube;

(iv) the eligible recipient is newly dependent on a ventilator;

(v) the eligible recipient now requires

suctioning every two hours, or more frequently, as needed;

(vi) the eligible recipient now has seizure activity that requires continuous monitoring for injury and aspiration, despite anti-convulsant therapy; or

(vii) the eligible recipient now requires increased assistance with activities of daily living as a result of a deterioration or permanent changes in his or her physical health status;

(c) **chronic or intermittent behavioral conditions or cognitive difficulties:**

the eligible recipient has chronic or intermittent behavioral conditions or cognitive difficulties, which are identified during the initial or reevaluation LOC assessment, or the eligible recipient has experienced a change in his or her behavioral health status, for which the eligible recipient requires additional services, supports, assistance, or supervision to address the behaviors or cognitive difficulties in order to keep the eligible recipient safe; these behaviors or cognitive difficulties are so severe and intense that they result in considerable risk to the eligible recipient, caregivers or the community; and require a frequency and intensity of assistance, supervision or consultation to ensure the eligible recipient's health and safety in the home or the community; in addition, these behaviors are likely to lead to incarceration or admission to a hospital, nursing facility or ICF-IID; require intensive intervention or medication management by a doctor or behavioral health practitioner or care practitioner which cannot be effectively addressed within the IBA, current AAB or other resources, including natural supports, the medicaid state plan services, medicare or other sources;

(i) examples of chronic or intermittent behaviors or cognitive difficulties are such that the eligible recipient injures him or herself frequently or seriously; has uncontrolled physical aggression toward others; disrupts most activities to the extent that his or her SSP cannot be implemented or routine

activities of daily living cannot be carried out; withdraws personally from contact with most others; or leaves or wanders away from the home, work or service delivery environment in a way that puts him or herself or others at risk;

(ii) the eligible recipient must submit a written, dated, and signed evaluation or letter from a licensed MD, doctor of osteopathy (DO), CNP, physician assistant (PA), psychiatrist, or RLD licensed psychologist that documents the change in the eligible recipient's behavioral health status relevant to the criteria; the evaluation or letter must have been completed after the last LOC assessment or less than one year from the date the request is submitted, whichever is most recent; the eligible recipient may submit additional supportive documentation including a current ISP if the eligible recipient is transferring from another waiver, a positive behavioral support plan or assessment, recent notes, a summary or letter from a behavioral health practitioner or professional with expertise in intellectual or developmental disabilities, recent discharge plan, recent recommendations from a rehabilitation facility, any other relevant documentation or recent statements from family members, friends or other support individuals involved with the eligible recipient.

(d) **change in natural supports:** the eligible recipient has experienced a loss, as a result of situations such as death, illness, or disabling condition, of his or her natural supports, such as family members or other community resources that were providing direct care or services, whether paid or not. This absence of natural supports or other resources is expected to continue throughout the period for which supplemental funds are requested. The type, intensity or amount of care or services previously provided by natural supports or other resources cannot be acquired within the IBA and are not available through the medicaid state plan services, medicare, other programs or sources

in order for the eligible recipient to live in a home and community-based setting.

(4) The eligible recipient is responsible for tracking all budget expenditures and assuring that all expenditures are within the AAB. The eligible recipient must not exceed the AAB within any SSP year. The eligible recipient's failure to properly allocate the expenditures within the SSP year resulting in the depletion of the AAB, due to mismanagement of or failure to track the funds, prior to the calendared expiration date does not substantiate a claim for a budget increase (i.e., if all of the AAB is expended within the first three months of the SSP year, it is not justification for an increase in the annual budget for that SSP year). Amendments to the AAB may occur within the SSP year and the eligible recipient is responsible for assuring that all expenditures are in compliance with the most current AAB in effect. Amendments to the AAB must be preceded by an amendment to the SSP.

(5) The AAB may be revised once the original annual budget request has been submitted and approved. Only one annual budget revision request may be submitted at a time, e.g., an annual budget revision request may not be submitted if a prior annual budget revision request is under initial review by the TPA. The same requirement also applies to any reconsideration of the same revision request.

G. SSP and annual budget supports: As specified in 8.314.6 NMAC and its service standards, the eligible recipient is assisted by his or her consultant in development and implementation of the SSP and AAB. The FMA assists the eligible recipient with implementation of the AAB. [~~Once implemented, a debit card will be utilized for related good listed on an HBA. The process for loading funding on the debit card is as follows:~~

~~(1) following the approval of the SSP by the TPA, the eligible recipient must submit an invoice to the FMA;~~

~~(2) the FMA will verify the accuracy of the invoice, then load the funding onto the debit card for use by the eligible recipient;~~

~~(3) the eligible recipient must utilize the funding for the approved related good only and maintain the receipt of purchase for a period of up to six years;~~

~~(4) the FMA shall schedule and perform random audits of purchases;~~

~~(5) if requested, the eligible recipient must provide verification of the purchase to the FMA within three working days.]~~

H. Submission for approval: The TPA must approve the SSP and associated annual budget request (resulting in an AAB). The TPA must approve certain changes in the SSP and annual budget request, as specified in 8.314.6 NMAC and mi via service standards and in accordance with 8.302.5 NMAC.

(1) At any point during the SSP and associated annual budget utilization review process, the TPA may request additional documentation from the eligible recipient. This request must be in writing and submitted to both the eligible recipient and the consultant provider. The eligible recipient has ~~[+5]~~ seven working days from the date of the initial request to respond with additional documentation. The TPA will issue a second request for information on the seventh day if information was not received and issue a final request for information 14 working days after the initial request. The eligible recipient has a total of 21 working days to respond with additional documentation. Failure by the eligible recipient to submit the requested information may subject the SSP and annual budget request to denial.

(2) Services cannot begin and goods may not be purchased before the start date of the approved SSP and AAB or approved revised SSP and revised AAB.

(3) Any revisions requested for other than

critical health or safety reasons within 60 calendar days of expiration of the SSP and AAB are subject to denial for that reason.
[8.314.6.17 NMAC - Rp, 8.314.6.17 NMAC, 3/1/2016; A, 11/1/2018]

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 63 SCHOOL PERSONNEL - LICENSURE REQUIREMENTS FOR ANCILLARY AND SUPPORT PERSONNEL
PART 17 LICENSURE FOR ATTENDANCE COACHES PRE K-12**

6.63.17.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
[6.63.17.1 NMAC - N, 11/15/2018]

6.63.17.2 SCOPE: Chapter 63, Part 17 governs all persons seeking licensure as attendance coaches for students in grades pre-k through 12.
[6.63.17.2 NMAC - N, 11/15/2018]
A

6.63.17.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, 22-10A-17 and 22-10A-5 NMSA 1978.
[6.63.17.3 NMAC - N, 11/15/2018]

6.63.17.4 DURATION: Permanent.
[6.63.17.4 NMAC - N, 11/15/2018]

6.63.17.5 EFFECTIVE DATE: November 15, 2018, unless a later date is cited in the history note at the end of a section.
[6.63.17.5 NMAC - N, 11/15/2018]

6.63.17.6 OBJECTIVE: This rule establishes two levels of licensure for attendance coaches and governs the licensure requirements for persons seeking level 1 and level 2 attendance coach licensure.
[6.63.17.6 NMAC - N, 11/15/2018]

6.63.17.7 DEFINITIONS:
A. "Attendance coach" means an individual, not including truancy officers who are employed by law enforcement agencies, licensed by the department whose primary role is to support students in grades pre-k through 12 to improve their school attendance during their academic career through prevention, non-punitive tiered interventions, parent notification, and community partnerships.
B. "Department" means the New Mexico public education department.
C. "Non-remedial degree coursework" means college-level coursework that counts toward a student's degree and that is not focused on remediation for those students who have failed to demonstrate competency in one or more core content areas.
D. "Prior professional experience" means full-time work experience or part-time work experience in a relevant field.
 [6.63.17.7 NMAC - N, 11/15/2018]

6.63.17.8 LEVEL 1 REQUIREMENTS:
A. Persons seeking licensure as a level 1 attendance coach pursuant to the provisions of this rule shall meet the following requirements:
(1) possess a high school diploma or equivalency;
(2) complete and satisfy background check procedures and requirements in accordance with Section 22-10A-5 NMSA 1978;
(3) complete department-approved attendance coach professional development; and
(4) possess at least two years of prior professional experience in one or more of the following areas:
(a) corrections;
(b) counseling;
(c) criminal justice;
(d) education;

(e) guidance counseling;
(f) juvenile justice;
(g) law enforcement;
(h) psychology;
(i) public administration;
(j) social work;
(k) sociology; or
(l) other closely related fields, as determined by the department.
B. In addition to satisfying the requirements of Subsection A of 6.63.17.8 NMAC, a person who seeks a level 1 attendance coach license shall meet one of the following requirements:
(1) hold an associate's degree from a nationally or regionally accredited college or university that includes at least 15 semester hours in non-remedial degree coursework; or
(2) have completed 48 semester hours of academic credit awarded by a nationally or regionally accredited college or university that includes at least 15 semester hours in non-remedial coursework.
C. Persons holding a level 1 license may apply for a higher level of licensure at any time during the licensure period provided:
(1) all requirements for the higher level of licensure are satisfied; and
(2) the applicant provides certification from the superintendent or charter school administrator that the attendance coach has satisfactorily completed attendance coach duties on a form developed by the department.
D. Individuals holding a teaching license or other instructional support license shall be able to take a position as an attendance coach without seeking level 1 license.
 [6.63.17.8 NMAC - N, 11/15/2018]

6.63.17.9 LEVEL 2 REQUIREMENTS:
A. Persons seeking a level 2 attendance coach license pursuant to the provisions of this rule shall meet the following requirements:
(1) hold a bachelor's degree from a nationally or regionally accredited college or university that includes at least 30 semester hours in non-remedial degree coursework;
(2) complete and satisfy background check procedures and requirements in accordance with Section 22-10A-5 NMSA 1978;
(3) complete department-approved attendance coach professional development; and
(4) possess at least three years of prior professional experience in one or more of the following areas:
(a) corrections;
(b) counseling;
(c) criminal justice;
(d) education;
(e) guidance counseling;
(f) juvenile justice;
(g) law enforcement;
(h) psychology;
(i) public administration;
(j) social work;
(k) sociology; or
(l) other closely related fields, as determined by the department.
B. Individuals holding a teaching license or other instructional support license shall be able to take a position as an attendance coach without seeking level 2 license.
 [6.63.17.9 NMAC - N, 11/15/2018]

6.63.17.10 ATTENDANCE COACH COMPETENCIES: The attendance coach shall, at a minimum, understand and be able to:

- A. provide individualized, non-punitive intervention to address chronic absenteeism;
 - B. lead schoolwide attendance initiatives;
 - C. develop and maintain community partnerships;
 - D. collect and analyze attendance data;
 - E. communicate analyses of attendance data and interventions to school administration and staff; and
 - F. connect students and families to appropriate, available services.
- [6.63.17.10 NMAC - N, 11/15/2018]

6.63.17.11 RENEWAL LICENSURE: Persons seeking renewal of a level 1 or level 2 attendance coach license shall demonstrate, at a minimum, the competencies outlined in 6.63.17.10 NMAC and provide documentation of such signed by the superintendent or charter school administrator.

[6.63.17.11 NMAC - N, 11/15/2018]

6.63.17.12 IMPLEMENTATION:

- A. Holders of the attendance coach license, pre-k through 12 may not use this license to provide instruction in any other subject matter, unless they hold a valid department license authorizing them to provide such instructional services.
- B. Level 1 licenses shall be issued for a period of three years and may be continued or renewed by meeting requirements outlined in 6.63.17.8 NMAC.
- C. Level 2 licenses shall be issued for a period of nine years and may be continued or renewed by meeting requirements outlined in 6.63.17.9 NMAC.
- D. All attendance coach pre-k through 12 licenses shall commence on July 1st of the year of issuance and expire June 30th of the year of their expiration. No

licenses issued pursuant to this rule shall be effective retroactively to any time before the effective date of this regulation.

- E. Applicants for attendance coach licensure shall pay an application fee of \$35 at the time of initial licensure and at the time of renewal.
 - F. The department shall provide professional development regarding the attendance coach competencies outlined in 6.63.17.10 NMAC.
- [6.63.17.12 NMAC - N, 11/15/2018]

HISTORY of 6.63.17 NMAC:
[RESERVED]

TAXATION AND REVENUE DEPARTMENT

This is an amendment to 18.19.5 NMAC, Sections 15, 16 and 17, effective 10/30/2018.

18.19.5.15 - PROOF OF [IDENTIFICATION NUMBER,] IDENTITY, AND AGE FOR A DRIVING AUTHORIZATION CARD OR IDENTIFICATION CARD THAT IS NOT ACCEPTABLE FOR FEDERAL PURPOSES:

- A. Applicants for a New Mexico driving authorization card or identification card that is not acceptable for federal purposes must provide documentary proof of their [identification number] identity, age and residency.
- B. An applicant who cannot establish lawful status and who does not hold a current, valid New Mexico driver's license or identification card must also submit fingerprints for a background check, as provided in 19.18.5.17 NMAC.
- C. [An applicant who chooses to provide a social security number must present his or her social security administration (SSA) account number card. If a SSA account card is not available, the person shall present one the following documents, provided that the document bears the applicant's social security number:

- ~~(1) a W-2 form;~~
- ~~(2) a SSA-1099 form;~~
- ~~(3) a non-SSA-1099 form; or~~
- ~~(4) a pay stub with the applicant's name and social security number on it.~~
- ~~D. Applicants can use the following documents to provide documentary proof of their identification number or documentary proof of their identity, but one document cannot be used for proof of both their identification number and identity:~~
- ~~(1) a passport or passport card from the applicant's country of citizenship if verified through systematic alien verification for entitlements system (SAVE);~~
- ~~(2) a certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place of birth;~~
- ~~(3) a consular report of birth abroad issued by the U.S. department of state, form FS-240, DS-1350 or FS-545;~~
- ~~(4) an unexpired employment authorization document issued by the U.S. department of homeland security, form I-766 or form I-688B, verified by SAVE;~~
- ~~(5) an identification card issued by the consulate of Mexico in El Paso, Texas, or Albuquerque, New Mexico, or such other foreign consulate with which the New Mexico motor vehicle division has established a reliable method of verifying the authenticity of the identification card;~~
- ~~(6) an individual tax identification number;~~
- ~~(7) a certified letter of enrollment issued by a federally recognized Indian nation, tribe or pueblo;~~
- ~~(8) a valid identification card issued by a federally recognized Indian nation, tribe or pueblo;~~
- ~~(9) certified copy of foreign birth certificate issued by the applicant's place or birth;~~

provided that if the document is not in English, a certified copy of the foreign birth with a notarized English translation;

_____ (10) _____ affidavit of Indian birth;

_____ (11) _____ a state issued driver's license, a driver's license issued by a territory of the United States, or by jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

_____ (12) _____ a state government-issued photo identification card, or a photo identification card issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

_____ (13) _____ a state government-issued photo learner's permit, or a photo learner's permit issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

_____ (14) _____ an American Indian or Alaskan proof of Indian blood, certificate of degree of Indian blood, federal Indian census card or tribal membership card;

_____ (15) _____ a photo identification card issued by the United States military, United States coast guard or New Mexico national guard;

_____ (16) _____ an identification document issued by the United States veterans administration, so long as it is accompanied by a United States veterans administration medical center identification card;

_____ (17) _____ a valid United States active duty/retiree/reservist military identification card (DOD ID DD-2);

_____ (18) _____ a United States, state, or local government-issued photo ID, issued based on name, social security number and date of birth;

_____ (19) _____ N560 certificate of citizenship if verified in SAVE;

_____ (20) _____ N550 certificate of naturalization if verified in SAVE;

_____ (21) _____ a valid permanent resident card issued by the United States government if verified in SAVE;

_____ (22) _____ a valid I-551 resident alien card issued since 1997 if verified in SAVE; or

_____ (23) _____ a valid New Mexico license or identification card;

_____ (24) _____ a court order for name change, gender change, adoption or divorce, as long as it includes the legal name, date of birth and court seal;

_____ (25) _____ a New Mexico correction department photo identification card, or a photo identification card issued by the federal bureau of prisons, that includes the name, date of birth and documentation that the card has not expired within the past year;

_____ (26) _____ a social security card;

_____ (27) _____ a medical insurance card or documentation of medical insurance coverage of eligibility that contains an identification number;

_____ (28) _____ military discharge/separation papers (DD-214);

_____ (29) _____ selective service card.] Applicants can use one of the following documents if it contains the applicant's name and date of birth, to provide documentary proof of their identity and age.

If the document does not contain the applicant's name and date of birth, two of the following documents will be required:

_____ (1) _____ an original or certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place of birth;

_____ (2) _____ a consular report of birth abroad issued by the U.S. department of state, form FS-240, DS-1350 or FS-545;

_____ (3) _____ an unexpired employment authorization document issued by the U.S. department of homeland security, form I-766 or form I-688B, verified by SAVE;

_____ (4) _____ an identification card issued by the consulate of Mexico in El Paso, Texas, or Albuquerque, New Mexico, or such other foreign consulate;

_____ (5) _____ a certified letter of enrollment issued by a federally recognized Indian nation, tribe or pueblo;

_____ (6) _____ a valid identification card issued by a federally recognized Indian nation, tribe or pueblo;

_____ (7) _____ certified copy of foreign birth certificate issued by the applicant's place of birth, provided that if the document is not in English, a certified copy of the foreign birth with a notarized English translation;

_____ (8) _____ affidavit of Indian birth;

_____ (9) _____ a state issued driver's license, a driver's license issued by a territory of the United States, or by jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

_____ (10) _____ a state government-issued photo identification card, or a photo identification card issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

_____ (11) _____ a state government-issued photo learner's permit, or a photo learner's permit issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

_____ (12) _____ an American Indian or Alaskan proof of Indian blood, certificate of degree of Indian blood, federal Indian census card or tribal membership card;

_____ (13) _____ a photo identification card issued by the United States military, United States coast guard or New Mexico national guard;

_____ (14) _____ an identification document issued by the United States veterans administration, so long as it is accompanied by a

United States veterans administration medical center identification card;
(15) a valid United States active duty/retiree/reservist military identification card (DOD ID DD-2);
(16) a United States, state, or local government-issued photo ID, issued based on name, social security number and date of birth;
(17) N560 certificate of citizenship if verified in SAVE;
(18) N550 certificate of naturalization if verified in SAVE;
(19) a valid permanent resident card issued by the United States government if verified in SAVE;
(20) a valid I-551 resident alien card issued since 1997 if verified in SAVE;
(21) a valid New Mexico license or identification card;
(22) a court order for name change, gender change, adoption or divorce, as long as it includes the legal name, date of birth and court seal;
(23) a New Mexico correction department photo identification card, or a photo identification card issued by the federal bureau of prisons, that includes the name, date of birth and documentation that the card has not expired within the past year;
(24) a social security card;
(25) military discharge/separation papers (DD 214);
(26) selective service card;
(27) an I-94 form presented without a passport if it contains the applicant's photo;
(28) a military dependent identification card that includes the applicant's photo;
(29) a medical insurance card or documentation of medical insurance coverage or eligibility containing an insurance identification number including a Medicaid or Medicare card;

(30) a passport or passport card from the applicant's country of citizenship;
(31) a passport or passport card from the United States if verified through systematic alien verification for entitlements system (SAVE);
(32) individual tax identification number (ITIN);
(33) a medical record less than one year old that is not from a visit to an emergency room or urgent care facility;
(34) proof of eligibility for and receipt of welfare benefits, including general assistance, temporary assistance for needy families and the supplemental nutrition assistance program with a copy of the human services department eligibility profile page dated with the last year.
 [18.19.5.15 NMAC - N, 11/15/2016; A/E, 6/26/2018; A, 10/30/2018]

18.19.5.16 - PROOF OF NEW MEXICO RESIDENCY:

A. All applicants for a REAL ID Act of 2005 compliant New Mexico identification card, driving permit, provisional driver's license, or driver's license, other than a commercial driver's license, and all applicants for a driving authorization card or identification card not acceptable for federal purposes must provide documentary evidence demonstrating New Mexico residency.

B. Applicants must provide two of the following documents, showing the applicant's name or the name of applicant's spouse in combination with a certificate of marriage and a New Mexico residential address for the applicant, as proof that the applicant lives in New Mexico.

(1) a current real property rental agreement or purchase agreement;
(2) a utility bill dated within 60 days, such as water, gas, electric, waste, telephone, cable or satellite bill, but not a bill for a cell phone;
(3) an insurance bill, card or binder, dated

within the past 6 months;
(4) a bank or credit card statement dated within 60 days;
(5) an employment pay stub that contains the applicant's name and address, dated within 60 days;
(6) a current, local property tax statement or mortgage documents;
(7) a document from an education institution, such as a transcript, report card or enrollment confirmation, provided it is dated within 60 days;
(8) original documents from a city, county, state, tribal or federal government organization attesting to the fact that the applicant is a New Mexico resident;
(9) a New Mexico medical assistance card with address on card, letter from issuing agency that came with card showing name and address, or profile printout from issuing agency;
(10) a New Mexico public assistance card with address on card, letter from issuing agency that came with card showing name and address, or profile printout from issuing agency;
(11) documents indicating membership in a New Mexico religious organization, provided that the applicant is less than 18 years of age; or
(12) documents indicating membership in a New Mexico sports organization, provided that the applicant is less than 18 years of age;
(13) [if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico driver's license, the parent/guardian's New Mexico identification card, or two proofs of New Mexico residency of the parent/guardian.] a New Mexico medical or public assistance card, profile printout or a letter from the issuing agency;

(14) if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico driver's license, the parent/guardian's New Mexico identification card, or two proofs of New Mexico residency of the parent/guardian; and

(15) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501(c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.

C. Applicants for an identification card not acceptable for federal purposes who are homeless or in temporary lodging and unable to provide two of the documents identified in Subsection B of 18.19.5.16 NMAC may provide an affidavit or a notarized letter from [in the manner required by the department from] a representative of a New Mexico governmental entity, not-for-profit organization, assisted care facility/home, adult assisted living facility/home, homeless shelter, transitional service provider, or group/half way house attesting to the address where the applicant resides or receives services *in lieu of* the documents required in Subsection B of 18.19.5.16 NMAC. [18.19.5.16 NMAC - N, 11/15/2016; A/E, 6/26/2018; A, 10/30/2018]

18.19.5.17 - FINGERPRINTS AND CRIMINAL HISTORY SCREENING:

A. **Authority; use of criminal history information:** The taxation and revenue department (TRD) is authorized to obtain the criminal history records of applicants for driving authorization cards and TRD is authorized to obtain criminal history records of applicants for identification cards that are not acceptable for federal agencies for federal purposes, provided that the applicant does not possess a valid New Mexico license or identification

card and that the applicant does not provide proof of lawful status.

B. Procedure for applicants:

(1) If an applicant otherwise meets the application and eligibility requirements, then TRD shall take a full-face or front-view photograph and fingerprints of the applicant and shall submit the same to the New Mexico department of public safety (DPS) for the purpose of obtaining a current criminal history screening through the national crime information center as well as a criminal history screening through the records of DPS.

(2) An applicant shall provide to TRD a criminal background screening request, fingerprints, and supporting documentation including an authorization for release of information to TRD in accordance with the procedures of DPS.

(3) DPS will review state records and also transmit the fingerprints to the federal bureau of investigation for a national screening. The results of the screening will be transmitted to TRD for review.

(4) Applicants and licensees shall bear any costs associated with ordering or conducting criminal history screening. Fees are determined by and payable to [TRD. ~~TRD shall timely submit the fees to DPS.~~] DPS or designee of DPS. Fees cannot be waived by TRD.

(5) TRD shall comply with applicable confidentiality requirements of the DPS and the federal bureau of investigation regarding the handling and dissemination of criminal history information.

C. TRD review of criminal history information:

(1) TRD shall review the results and shall not issue a driving authorization card if the results show that the applicant has an outstanding criminal arrest warrant for a felony or a misdemeanor charge in any state or country or if the results show that the applicant's fingerprints are associated with any name, date of birth or social security number other

than those provided when the person applied for the driving authorization card.

(2) TRD shall notify the person if the application is denied, including the reason for the denial, and the person's right to a hearing.

(3) TRD shall destroy the results of the screening after it has completed its review and issued the driving authorization card, or one year from the date of the denial, whichever occurs sooner.

D. Evidence of eligibility: A person whose application for a driving authorization has been denied shall become eligible upon submitting evidence that the basis for ineligibility was resolved. Such evidence may include:

(1) documents that demonstrate that the criminal arrest warrant was quashed, withdrawn, or resolved;

(2) documents that demonstrate that there is not a conflict with the name, date of birth or social security number; or

(3) other documents as approved by the director of the motor vehicle division. [18.19.5.17 NMAC - N, 11/15/2016; A/E, 6/26/2018; A, 10/30/2018]

WORKFORCE SOLUTIONS DEPARTMENT

At its public hearing on October 2, 2018, the Department of Workforce Solutions repealed its rule 11.3.300 NMAC entitled Labor and Workers Compensation; Employment Security; Claims Administration, adopted October 18, 2018 and effective November 1, 2018.

At its public hearing on October 2, 2018, the Department of Workforce Solutions repealed its rule 11.2.2 NMAC entitled Labor and Workers Compensation; Job Training; Equal Employment Opportunity in Apprenticeship State, adopted October 18, 2018 and effective November 1, 2018.

**WORKFORCE SOLUTIONS
DEPARTMENT**

**TITLE 11 LABOR AND
WORKERS COMPENSATION
CHAPTER 3 EMPLOYMENT
SECURITY
PART 300 CLAIMS
ADMINISTRATION**

11.3.300.1 ISSUING

AGENCY: New Mexico Department of Workforce Solutions, Employment Security Division, P.O. Box 1928 Albuquerque, NM 87103.
[11.3.300.1 NMAC – Rp, 11.3.300.1 NMAC, 11/1/2018]

11.3.300.2 SCOPE: General public

[11.3.300.2 NMAC – Rp, 11.3.300.2 NMAC, 11/1/2018]

11.3.300.3 STATUTORY

AUTHORITY: Sections 51-1-1 to 51-1-59 NMSA 1978.
[11.3.300.3 NMAC – Rp, 11.3.300.3 NMAC, 11/1/2018]

11.3.300.4 DURATION:

Permanent
[11.3.300.4 NMAC – Rp, 11.3.300.4 NMAC, 11/1/2018]

11.3.300.5 EFFECTIVE

DATE: November 1, 2018, unless a different date is cited at the end of a section.
[11.3.300.5 NMAC – Rp, 11.3.300.5 NMAC, 11/1/2018]

11.3.300.6 OBJECTIVE:

The purpose of this rule is to provide clarification of the Unemployment Compensation Law. This rule assists claimants and employers in better understanding how specific sections of the law are administered by the department. The rule also assists claimants and employers to better comply and better understand the department’s procedures.
[11.3.300.6 NMAC – Rp, 11.3.300.6 NMAC, 11/1/2018]

11.3.300.7 DEFINITIONS:

A. “Additional claim” means a claim application

which reactivates a claim during an existing benefit year or other eligibility period and certifies to a period of employment other than self-employment which occurred subsequent to the date of filing the last initial, additional or reopened claim.

B. “Agent state” means any state in which an individual files a claim for benefits from another state or states.

C. “Alternate base period” means the last four completed quarters immediately preceding the first day of the claimant’s benefit year.

D. “Base period and benefit year” means the base period and benefit year applicable under the unemployment compensation law of the paying state.

E. “Base period”, also called the “regular base period”, means the first four of the last five completed quarters as provided in Subsection A of Section 51-1-42 NMSA 1978 or the alternate base period.

F. “Benefits” means the unemployment insurance compensation benefits payable to a claimant with respect to their unemployment, under the unemployment insurance law of any state.

G. “Claimant” means an individual who has filed an initial claim, additional claim or reopened claim for unemployment compensation benefits and this filing is within a benefit year or other eligibility period.

H. “Combined-wage claimant” means a claimant who uses wages from more than one state to establish monetary eligibility for benefits and who has filed a claim under this arrangement.

I. “Educational or training institution or program” means any primary school, secondary school or institution of higher education, public or private, which offers instruction, either for a fee or without charge, and which requires attendance and participation, either in person or online, to receive the instruction.

J. “Emergency unemployment compensation” (EUC)

occurs when regular unemployment benefits are exhausted and extended for additional weeks. Unemployment extensions are created by passing new legislation at the federal level, often referred to as an “unemployment extension bill”. This new legislation is introduced and passed during high or above average unemployment rates.

K. “Employment” means all services which are covered under the unemployment compensation law of a state, whether expressed in terms of weeks of work or otherwise.

L. “Full-time employment” means the normal full-time hours customarily scheduled and prevailing in the establishment in which an individual is employed, but in no event less than 32 hours per week.

M. “Good cause” means a substantial reason, one that affords a legal excuse, a legally sufficient ground or reason. In determining whether good cause has been shown for permitting an untimely action or excusing the failure to act as required, the department may consider any relevant factors including, but not limited to, whether the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances, whether the party received timely notice of the need to act, whether there was administrative error by the department, whether there were factors outside the control of the party that prevented a timely action, the efforts made by the party to seek an extension of time by promptly notifying the department, the party’s physical inability to take timely action, the length of time the action was untimely, and whether any other interested party has been prejudiced by the untimely action. However, good cause cannot be established to accept or permit an untimely action or to excuse the failure to act, as required, that was caused by failure to keep the department directly and promptly informed of the claimant’s, employer’s or employing unit’s

correct address. A written decision concerning the existence of good cause need not contain findings of fact on every relevant factor, but the basis for the decision must be apparent from the order.

N. "Initial claim" means a new claim application submitted by the claimant to establish a benefit year and to obtain a determination of weekly and maximum benefit amounts.

O. "Instruction" means all teaching or opportunity for learning whether of a vocational or academic nature.

P. "Interstate benefit payment plan" means the plan approved by the interstate conference of employment security agencies as approved by the United States secretary of labor under which benefits shall be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

Q. "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the department finds that this exclusion would create undue hardship on such claimants in specified areas.

R. "Last employer" means the most recent employer or employing unit from which the claimant separated for reasons other than lack of work; or in the event that the claimant separated from the most recent employer for lack of work, the employer or employing unit before that from which the claimant separated for any reason other than lack of work, provided the claimant has not subsequently worked and earned wages in insured work or bona fide employment other than self-employment in an amount equal to or exceeding five times the claimant's weekly benefit amount.

S. "Liable state" means any state against which a

claimant files, through another state, a claim for benefits.

T. "Paying state" means the state against which the claimant is filing that actually issues the benefit payment.

U. "Real estate salesperson" means an individual who is licensed by the New Mexico real estate commission.

V. "Regular base period" means the first four of the last five completed quarters as provided in Subsection A of Section 51-1-42 NMSA 1978.

W. "Reopened claim" means a claim application which reactivates a claim during an existing benefit year or other eligibility period and certifies to a continuous period of unemployment for which the claimant did not file timely continued claims and during which the claimant either remained unemployed or had a period of self-employment since last reporting on this claim.

X. "State" means the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

Y. "Student" means any individual enrolled in an educational or training institution or program.

Z. "Trade adjustment assistance" (TAA) is a federal program that provides a variety of reemployment services including training and job-searching assistance and benefits to displaced workers who have lost their jobs or suffered a reduction of hours and wages as a result of increased imports or shifts in production outside the United States.

AA. "Trade readjustment allowances" (TRA) are income support payments to individuals who have exhausted unemployment benefits and whose jobs were affected by foreign imports as determined by a certification of group coverage issued by the Department of Labor.

BB. "Transitional claim" means a claim filed to request a determination of eligibility and establishment of a new benefit year having an effective date within

a seven-day period immediately following the benefit year ending date and a week for which compensation or waiting week credit was claimed; i.e. continuous certification.

CC. "Wages" means all compensation for services, including commissions and bonuses and the cash value of all compensation in any medium other than cash.

DD. "Week of unemployment" means any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

[11.3.300.7 NMAC – Rp, 11.3.300.7 NMAC, 11/1/2018]

11.3.300.8 THROUGH 300 [RESERVED]

11.3.300.301 FILING INITIAL, ADDITIONAL AND REOPENED CLAIMS:

A. Upon filing an initial claim, an additional claim, or a reopened claim, the claimant shall be subject to a waiting week period before the commencement of benefits begins.

B. Unless otherwise prescribed, any claimant wishing to claim benefits shall register for work, file an initial, additional, transitional or reopened claim for benefits and provide the name and address of their last employer.

C. The date of filing of any initial, additional or reopened claim shall be the Sunday of the week in which filed. Upon a showing of good cause, any initial claim or additional claim may be back-dated to the Sunday of the week immediately following the week in which the claimant was separated, and any reopened claim may be back-dated up to a maximum of twenty-one days from the preceding Sunday of the date of the request for back-dating. "Good cause," as used in 11.3.300.301 NMAC, exists when it is established that factors or circumstances beyond the reasonable control of the claimant caused the delay in filing. All requests for back-dating or post-dating shall include a fact-finding report.

D. Unless otherwise prescribed, all claims shall be made online or by phone, giving all information required thereby. A claimant shall also separately register for work within 14 calendar days of the date the claim is filed. If a claimant is already registered with the department from a prior claim, the registration must be reactivated within 14 days of the date the claim is filed. If a claimant's registration is not current with the department, their benefits shall be temporarily withheld until they comply unless good cause for the failure to register is shown. [11.3.300.301 NMAC – Rp, 11.3.300.301 NMAC, 11/1/2018]

11.3.300.302 FILING

CONTINUED CLAIMS: In order to establish and maintain eligibility for benefits a claimant cannot be subject to an administrative penalty pursuant to Subsection C of 11.3.300.314 NMAC, shall continue to report weekly as directed, and file continued claims for benefits online, by phone, or as otherwise prescribed by the department providing the information setting forth that:

- A.** the claimant is continuing their claim for benefits;
- B.** the claimant is unemployed or partially unemployed;
- C.** the claimant has registered for reemployment services;
- D.** since the claimant has registered for reemployment services, the claimant has not performed services or earned wages, except as indicated;
- E.** claimant is able to work, available for work, and actively seeking work; and
- F.** the claimant shall provide to the department their most current mailing or email address. It is the claimant's responsibility to maintain a current address with the department.

[11.3.300.302 NMAC – Rp, 11.3.300.302 NMAC, 11/1/2018]

11.3.300.303 TIMELY RESPONSE TO REQUEST FOR INFORMATION:

- A.** Any response to

a request for additional information from the department must be received by the department within 10 calendar days from the date transmitted.

B. The 10 calendar day period shall begin to run on the first day after the date the request was transmitted to the claimant or to the employer. If the tenth calendar day falls on a date when the department offices are closed, receipt on the first business day thereafter shall be timely. If a response is not received timely, the department will make a determination based on the information available at that time.

C. Employers and third party administrators must respond to request for additional information electronically.

[11.3.300.303 NMAC – Rp, 11.3.300.303 NMAC, 11/1/2018]

11.3.300.304 LATE FILING OF CONTINUED CLAIMS:

A. If the department finds good cause for a claimant's failure to timely file a continued claim, the claimant may file a late continued claim provided the certification is filed not later than the thirteenth day following the last day of the week requiring the certification.

B. A certification not processed due to a department request for additional information from the claimant shall be considered timely if the requested information is received by the department no later than 10 calendar days after the request for additional information is transmitted to the claimant.

[11.3.300.304 NMAC – Rp, 11.3.300.304 NMAC, 11/1/2018]

11.3.300.305 ALTERNATE BASE PERIOD:

A. Application of alternate base period: If a claimant is determined ineligible because the claimant does not have sufficient wages during the base period to qualify for benefits and is not eligible for a regular claim in any other state or a combination of states and the claimant's work history reflects that the claimant may qualify using the alternate base period, the department

will utilize the "alternate base period" to determine if the claimant is eligible for benefits. If the department applies the "alternate base period" and the wages for the most recent quarter have not yet been reported by the employer or processed by the department, the claimant will be required to provide proof of wages consisting of payroll checks ("check stubs"), W-2s or an appropriate affidavit. If the employer's reported wages are available for the most recent quarter, proof is not required from the claimant. On its own initiative and within its own discretion, if and when the department receives new or additional information regarding wages, it may initiate a reconsideration of the regular base period.

B. Effect of election: Wages that fall within the regular base period or the alternate base period established pursuant to 11.3.300.305 NMAC are not available for reuse in qualifying for a subsequent benefit year.

C. Procedure:
(1) Upon receipt of the claimant's documentary evidence of wages within the timeframe required, wages will be processed by the department and used on the claim.

(2) Upon processing of the most recent quarter's wages, a "notice of initial determination of benefits" will be issued utilizing the wage information provided by the claimant for the alternate base period.

(3) If the claimant fails to provide documentary evidence of wages within the timeframe required, the original "notice of initial determination of benefits" will become final.

(4) Employers will be notified of the wages used for the alternate base period on the notice to employer of claim determination, which may include wages based upon proof provided by the claimant. The employer will have 10 calendar days from date of transmission of determination to provide the actual wages or to object to the wages being

used on the claim, and may also protest charges based upon the reason for separation pursuant to Subsections A and C of 11.3.500.8 NMAC.

[11.3.300.305 NMAC – Rp,
11.3.300.305 NMAC, 11/1/2018]

11.3.300.306 RESERVED

[11.3.300.306 NMAC – Repealed,
11.3.300.306 NMAC, 11/1/2018]

11.3.300.307 RESERVED

[11.3.300.307 NMAC – Repealed,
11.3.300.307 NMAC, 11/1/2018]

11.3.300.308 CLAIM DETERMINATION:

A. NOTICE TO EMPLOYER OF FILING OF CLAIM: Whenever a claimant files an initial claim for benefits or an additional claim, the department shall immediately transmit to the claimant's last known employer, at the address of the employer as registered with the department, if so registered, and, if not registered, to the address provided by the claimant, a dated notice of the filing of the claim and a fact-finding questionnaire. The employer shall provide the department with full and complete information in response to the inquiry. The employer shall transmit a response directly to the department within 10 calendar days from the date the notice of claim is sent. Unless excused by the department, the response must be an electronic transmittal.

B. REQUEST FOR ADDITIONAL INFORMATION: Prior to issuance of a determination the department may request additional information from the employer, the claimant or witnesses relative to the separation of the claimant from employment.

C. INITIAL DETERMINATION: A determination on any claim for unemployment benefits shall be transmitted only after the department has evaluated the claim.

(1) When a non-monetary issue is not raised in an application for benefits and the employer's response is not received by the department within 10 calendar

days after the transmission of the notice of claim, a determination shall be made based upon the information on the application.

(2) The 10 day period shall begin to run on the day after the notice of claim was transmitted to the employer as indicated on the application. If the tenth calendar day falls on the weekend or on a holiday, the reply shall be timely if received by the department on the following business day.

(3) After the 10 day period has passed, the department shall immediately transmit to the parties the determination including the reason, and shall advise the parties of the right to appeal that determination pursuant to these rules.

(4) If the claimant is subsequently disqualified from the receipt of benefits resulting in an overpayment, the employer will remain liable for any benefit charges incurred to the date of disqualification if the employer or an agent of the employer demonstrates an established pattern of failing to respond timely or adequately to the notice of claim within the ten-day period. In no employer shall be liable for more than ten weeks' worth of benefits charges pursuant to 11.3.300.308 NMAC as a penalty for its failure to respond to the claim in a timely manner.

(a) A pattern is defined as failure to respond timely or adequately to five claims, or more at the secretary's discretion, within a calendar year.

(b) An inadequate response is defined as the employer's failure to provide relevant information or documentation that was reasonably available at the time a response was requested by the department.

(5) An employer may appeal a determination within 15 days of the assessment of the penalty that the employer or agent of the employer failed to respond timely or adequately to the notice of claim. Upon a finding on appeal that the employer or an agent of the employer had good cause for failure

to transmit a timely or adequate response, the employer will be relieved of such charges. Overturned determinations will not be factored into the analysis of whether a pattern exists.

D. REDETERMINATION: A redetermination may be issued only if all the following criteria are met:

(1) The department perceives the need for reconsideration as a result of a protest by an interested party due to new or additional information received. Examples of the type of errors which may prompt a redetermination are misapplication or misinterpretation of the law, mathematical miscalculation, an additional fact not available to the department at the time of the determination excluding those facts the employer and claimant had the opportunity to provide prior to the initial determination, transmitting a notice to the wrong employer or address, an employer's timely response statement disputing a claim for benefits, or other administrative error.

(2) All evidence and records are re-examined.

(3) A written redetermination notice is issued to the claimant and any other interested party, and is documented in the department records.

(4) A redetermination can be issued no later than 45 calendar days from the original determination date or 45 days from the date of the first payment derived from the original determination, whichever event occurs latest.

(5) The department may issue a redetermination provided that the employer's statement was received within the statutory time limits and within less than 45 calendar days from the date of the first payment.

(6) If the claimant began collecting benefits and as a result of redetermination will be denied benefits, the claimant shall be advised.

E. STOPPING PAYMENT DUE TO ADMINISTRATIVE ERROR: Once an initial determination is made and payment of benefits is begun, payments shall not be stopped without prior notice and an opportunity to be heard pursuant to 11.3.300.500.9 NMAC. When payments are made as a result of administrative error by the department and are clearly not authorized by law, rule, regulation, or any determination made pursuant to Subsection C of 11.3.300.308 NMAC, such payment shall not be deemed to have been made pursuant to a determination of eligibility.

F. EMPLOYER'S NOTICE OF A LABOR DISPUTE: When there is a strike, lock-out or other labor dispute, the employer shall file with the department after the commencement of such activity, and upon the demand of the department, a report of the existence and nature of the labor dispute, and the number of persons affected; and shall promptly provide the names, social security numbers and work classifications of all individuals unemployed due to the labor dispute, and whether and in what manner each individual is participating in the dispute or has a direct interest in the outcome.

G. TERMINATION OF CONTINUED CLAIMS: Payment of continued benefits to any person who has been determined eligible to receive benefits on an initial claim in accordance with 11.3.300.308 NMAC shall not thereafter be terminated without notice and an opportunity to respond. [11.3.300.308 NMAC – Rp, 11.3.300.308 NMAC, 11/1/2018]

11.3.300.309 BENEFITS FOR PARTIAL UNEMPLOYMENT:

A. PARTIALLY UNEMPLOYED CLAIMANTS: Claimants are partially unemployed in any week in which their usual full-time employment is reduced to less than the normal full-time hours customarily scheduled and prevailing in the establishment in which they are employed, and their wages fall below their weekly benefit amount, due to

the employer having less than full-time work for them. For partially unemployed claimants whose wages are paid on a weekly basis, a week of partial unemployment shall consist of their pay period week, a calendar week or some other period designated by the department.

B. NOTICE OF REDUCED EMPLOYMENT: On the next payday after any week for which an employee's work has been reduced by the employer to less than 32 hours, their employer shall notify them that they may file a claim by contacting the department for a week of partial unemployment. If the employer fails to notify the employees of their rights under the law regarding reduced employment, the employees may file for benefits at any time. Once the employees have received notice from the employer, they may be denied benefits if they have earned five times the weekly benefit amount after notification.

C. EMPLOYER RECORDS IN CONNECTION WITH PARTIAL UNEMPLOYMENT: In addition to the requirements set forth in 11.3.400.401 NMAC, all employers shall keep their payroll records in such form that it would be possible from an inspection thereof to determine which employees may be eligible for partial benefits to include:

- (1) wages earned by weeks as described in Subsection A of 11.3.300.309 NMAC;
 - (2) whether any week was in fact a week of less than full-time work; and
 - (3) time lost, if any, by workers due to their unavailability for work.
- [11.3.300.309 NMAC – Rp, 11.3.300.309 NMAC, 11/1/2018]

11.3.300.310 INTERSTATE CLAIMS:

A. REGISTRATION FOR WORK:

(1) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the

law, regulations, rules, policies and procedures of the agent state. The registration shall be accepted as meeting the registration requirements of the liable state.

(2) Each agent state shall report to the liable state whether each interstate claimant meets the registration requirements of the agent state.

B. BENEFIT RIGHTS OF INTERSTATE CLAIMANTS:

(1) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which the claimant has available benefit credits.

(2) For purposes of this rule, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

C. CONTINUED CLAIMS FOR BENEFITS:

(1) Any claim for benefits or for waiting-period credit shall be filed by an interstate claimant in accordance with uniform procedures developed pursuant to the interstate benefit payment plan. The claim shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(2) The claim shall be filed in accordance with the agent state's rules or regulations for intrastate claims.

(a) With respect to claims for weeks of unemployment in which claimants are not working for their regular employers, the liable state shall, under circumstances which it considers

good cause, accept a continued claim filed up to one week or one reporting period late. If a claimant files more than two weeks late, an initial interstate claim must be used to begin a claim series, and no continued claim for a past period shall be accepted.

(b) With respect to weeks of unemployment during which claimants are attached to their regular employers, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.

D.
DETERMINATIONS OF CLAIMS:

(1) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

E. APPELLATE PROCEDURES:

(1) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(2) With respect to the time limits imposed by the law of a liable state other than New Mexico, upon the filing of an appeal in connection with a disputed benefit claim, whether or not the appeal is timely shall be determined by the liable state by reference to that state's law, regulations, rules, policies and procedures. In interstate appeals in which New Mexico is the liable state, whether or not the appeal is timely shall be determined by reference to relevant provisions of the New Mexico Unemployment Compensation Act and 11.3.500.8 NMAC.

F. EXTENSION OF INTERSTATE BENEFIT PAYMENTS TO INCLUDE CLAIMS TAKEN IN AND FOR CANADA:

This rule shall apply to claims taken in and for Canada.

[11.3.300.310 NMAC – Rp, 11.3.300.310 NMAC, 11/1/2018]

11.3.300.311 COMBINED-WAGE CLAIMS: All combined-wage claims shall be subject to the provisions of the interstate arrangement for combining employment and wages, the interstate benefit payment plan, the regulations and guidelines prescribed by the United States secretary of labor, and the applicable provisions of the Unemployment Compensation Law and department regulations which apply to claims for and payment of regular unemployment compensation.

A. FILING OF CLAIMS:

(1) An unemployed claimant who has covered employment and wages in more than one state has the right to combine such wages and employment in the base period of one state if the combination will provide benefits for which the claimant could not otherwise qualify or will increase the benefits for which the claimant qualifies in a single state. The claimant must file a combined-wage claim if the claimant is eligible to do so rather than claim extended benefits. If the claimant wishes, the claimant has the right to reject a combined-wage and file against a state in which the claimant is separately eligible or to cancel the combined-wage claim and file no claim.

(2) Restrictions on combined-wage claims:

- (a) any unemployed claimant who has covered employment in New Mexico and in another state may file a combined-wage claim unless:
 - (i) the claimant has established a valid claim under any other state;
 - (ii) the benefit year has not ended; and

(iii) there are still unused benefit rights; a claimant will not be considered to have unused benefit rights on a prior claim if all benefits have been exhausted or benefits have been denied by a seasonal restriction or benefits have been postponed for an indefinite period or for the remainder of the benefit year;

(b) if a claimant files a combined-wage claim, all wages and employment in all states in which the claimant worked during the base period of the paying state must be included except employment and wages which are not transferable under the provisions of Subsection C of 11.3.300.311 NMAC.

B. RESPONSIBILITIES OF NEW MEXICO WHEN TRANSFERRING WAGES:

(1) Wages earned in New Mexico in covered employment during the base period of the combined wage claim filed by a claimant will be promptly transferred to the paying state.

(2) Wages earned in New Mexico will not be transferred if the employment and wages have been:

(a) transferred to another paying state and have not been returned unused, or which have been previously used by New Mexico as the basis for a monetary determination which establishes a benefit year, or

(b) cancelled or are otherwise unavailable to the claimant as a result of a monetary determination by New Mexico prior to its receipt of the request for transfer, if such determination has become final or is the subject of a pending appeal; if the appeal is finally decided in favor of the combined-wage claimant, any employment and wages deemed eligible for use as wages in establishing monetary eligibility will be transferred to the paying state.

C. NON-MONETARY ELIGIBILITY DETERMINATION: When a combined-wage claim is filed, the law and eligibility requirements of

the paying state apply even if an issue has been previously adjudicated by a transferring state.

D. CONDITIONS FOR WITHDRAWAL OF A COMBINED WAGE CLAIM:

A combined-wage claimant may withdraw the combined-wage claim any time before the monetary determination of the paying state becomes final, provided that the combined-wage claimant:

(1) repays in full any benefits paid to the claimant; or

(2) authorizes the state against which the claimant will claim benefits to withhold and forward to the former paying state a full repayment of benefits.

E. RECOVERY OF PRIOR OVERPAYMENTS: If there is an overpayment outstanding in the transferring state, including New Mexico, and such transferring state so requests, the overpayment shall be deducted from any benefits the paying state would otherwise pay to the combined-wage claimant on the combined-wage claim except to the extent prohibited by the law of the paying state. The paying state shall transmit the amount deducted to the transferring state or credit the transferring state's required reimbursement under the arrangement. This paragraph shall apply to overpayments only if the transferring state certifies to the paying state that the determination of overpayment was made within three years before the combined-wage claim was filed and that repayment is legally required and enforceable against the combined-wage claimant under the law of the transferring state.

F. NOTIFICATION AND APPEALS:

(1) A combined-wage claimant will receive a monetary determination notice from the paying state once the wage information from all states is received. The claimant has the right to appeal any aspect of the monetary determination. The appeal may be against either the paying state or the transferring state depending

upon which agency issued the determination which the combined-wage claimant considers adverse to the claimant's interest. If the transferring state refused to transfer wages because the wage credits were cancelled under a disqualification or because the work was not covered, the combined-wage claimant will be sent an appealable determination by the transferring state.

(2) Except as provided in this rule, when the claimant files a combined-wage claim in the paying state, any protest or appeal shall be in accordance with the law of such state.

(a) Where the combined-wage claimant files a combined-wage claim in a state other than the paying state or under the circumstances described in this rule, any protest or appeal shall be in accordance with the interstate benefit payment plan.

(b) To the extent that any protest or appeal involves a dispute as to the coverage of the employing unit or services in the transferring state or otherwise involves the amount of wages subject to transfer, the protest or appeal shall be decided by the transferring state in accordance with its law.

[11.3.300.311 NMAC – Rp, 11.3.300.311 NMAC, 11/1/2018]

11.3.300.312 EXTENDED BENEFIT CLAIMS AND PAYMENT:

A. APPLICATION OF OTHER RULES: The pertinent provisions of the law and rules that apply to regular claimants apply also to claimants for extended claims insofar as such rules pertaining to regular claimants are not inconsistent with the provisions of this rule.

B. FILING CLAIMS: Unless otherwise prescribed, a claimant who has received all of the regular benefits that were available to the claimant under the Unemployment Compensation Law or any other state law and is an "exhaustee" as defined in Subsection H of Section 51-1-48 NMSA 1978, may apply for extended benefits by filing an extended benefits

claim via internet or by contacting the department. The claim shall become effective as of the Sunday of the week in which filed, provided that the claim may be back-dated to the Sunday of the week immediately following the week which exhausted benefit eligibility if the failure to file is determined to be with good cause.

C. CLAIM DETERMINATION AND NOTICE:

Upon receipt of a claim for extended benefits the department will issue a determination on the eligibility for extended benefits and transmit a notice thereof to the claimant. The determination may be appealed in the manner prescribed for regular benefit determination appeals.

D. CONTINUED CLAIMS: Any claimant, in order to claim weekly-extended benefits, shall file the continued claim as directed by the department.

E. RELIEF FROM CERTAIN ELIGIBILITY REQUIREMENTS: A claimant who claims extended benefits will not be required to:

(1) be unemployed for a waiting-period of one week; or

(2) perform services in employment as designated in Subsection B of Section 51-1-5 NMSA 1978, before extended benefits are paid.

F. REQUIREMENT FOR ADDITIONAL INITIAL CLAIMS: A claimant whose benefit year expires within an extended benefit period must file an initial claim for regular benefits at the end of that current benefit year and, if a new benefit year is not established, at the beginning of each calendar quarter during the period to determine if the claimant has sufficient wage credits in covered employment to establish a new regular claim.

[11.3.300.312 NMAC – Rp, 11.3.300.312 NMAC, 11/1/2018]

11.3.300.313 "WEEK" DEFINED:

A. WEEK OF UNEMPLOYMENT: Weeks of unemployment and claims shall be

on a calendar week basis, except as prescribed in the case of partial unemployment, or as the department may direct otherwise in any case where it appears some other “week” may better secure the full payment of benefits when due.

B. CONDITIONS FOR ESTABLISHMENT: The calendar week within which the claimant becomes unemployed and in which the claimant earns less than the claimant’s weekly benefit amount shall be credited as a week of unemployment.

C. “WEEK” IN MORE THAN ONE BENEFIT YEAR: A week of unemployment shall be deemed to be within that benefit year which includes the greater part of such week.

D. WEEK OF DISQUALIFICATION: With respect to acts and periods of disqualification under Section 51-1-7 NMSA 1978, which occur or commence before the start of any week of unemployment as defined in 11.3.300.313 NMAC and Subsection A of 11.3.300.309 NMAC, “week” means the calendar week in which the disqualifying act or event occurs.

[11.3.300.313 NMAC – Rp, 11.3.300.313 NMAC, 11/1/2018]

11.3.300.314 FRAUDULENT CLAIMS:

A. Claimant Fraud:
(1) Subsection F of Section 51-1-38 NMSA 1978 of the Unemployment Compensation Law provides: “Notwithstanding any other provision of the Unemployment Compensation Law, including the provisions of Subsection J of Section 51-1-8 NMSA 1978, if any individual claiming benefits or waiting period credits shall, in connection with such claim, make any false statement or representation, in writing or otherwise, knowing it to be false or shall knowingly fail to disclose any material fact in order to obtain or increase the amount of a benefit payment, such claim shall not constitute a valid claim for benefits in any amount or for waiting period credits but shall be

void and of no effect for all purposes. The entire amount of the benefits obtained by means of such claim shall be, in addition to any other penalties provided herein, subject to recoupment by deduction from the claimant’s future benefits or they may be recovered as provided for the collection of past due contributions in Subsection B of Section 51-1-36 NMSA 1978.” The terms used in, Section 51-1-38 NMSA 1978 mean:

(a) “False” means a statement contrary to fact.

(b) “Knowingly” means the person making the statement, at the time it was made, knew the statement to be false or should have known it to be false because the person had no reasonable basis for believing it to be true.

(c) “Knowingly fails to disclose any material fact” means the claimant deliberately withholds information which the claimant knows should be disclosed to the department.

(d) “Material fact” means the fact affects the eventual outcome of a transaction. A fact which, if known, would result in a determination adverse to the claimant is a material fact. A fact is not material if the failure to disclose it or the intentional misstatement of it would not cause injury. A fact which, if known, would not cause a denial or reduction of benefits or disqualification from receipt of benefits is not a material fact.

(e) “With intent to obtain benefits” means the claimant intended the statement to assist the claimant to obtain benefits. In the absence of facts to indicate otherwise, when concealment of a material fact by willful misstatement or nondisclosure occurs in connection with a claim for benefits, it is assumed that the claimant’s intent was to obtain or increase the amount of a benefit payment. When facts are established which indicate a different intent, the conclusions as to the claimant’s intent shall be based on consideration of all the facts and not

merely an assumption.

(2) Claimants who inadvertently make a mistake or omission on the basis of information previously given them by the department, cannot reasonably be expected to understand their responsibility and shall not be subject to the provisions of Subsection D of Section 51-1-38 NMSA 1978.

(3) The department shall impose an administrative penalty pursuant to Subsection A of Section 51-1-38 NMSA 1978 for each week that a claimant knowingly makes a false statement or representation or knowingly fails to disclose a material fact to obtain or increase the amount of a benefit payment. Administrative penalties shall be imposed as follows:

(a) for each week of unreported or underreported earnings, the claimant shall forfeit all benefit rights for a period of four weeks, up to a maximum of 52 weeks; from the date of the determination or the date the claimant is next determined eligible for benefits;

(b) for each false statement on separation, eligibility, refusal of work and other issues, the claimant shall forfeit all benefit rights for a period of four weeks, up to a maximum of 52 weeks; from the date of the determination or the date the claimant is next determined eligible for benefits; and

(c) In any case where a claimant fraudulently obtained or increased benefits in two or more separate offenses, the claimant shall forfeit all benefit rights for 52 weeks from the date of the determination or the date the claimant is next determined to be eligible for benefits.

(4) The department shall demand immediate repayment of any overpayment established pursuant to Subsection D of Section 51-1-38 NMSA 1978. A warrant of levy and lien shall be filed in all cases where the overpayment is not repaid immediately. Recovery of the overpayment may be by any means permitted by law. Recovery of

fraudulent overpayments may include court awarded costs. The court costs awarded by the court shall be added to the overpayment and shall be collected in the same manner as the underlying overpayment.

(5) Restitution of an amount overpaid to a claimant due to fraudulent misrepresentation or failure to disclose a material fact shall not preclude the department from requesting criminal proceedings against such claimant.

(6) The department shall impose a civil penalty pursuant to Subsection B of Section 51-1-38 NMSA 1978 upon every claimant who knowingly makes a false statement or representation or knowingly fails to disclose a material fact to obtain or increase the amount of a benefit payment. The total amount of the penalty shall be twenty-five percent of the amount of benefits overpaid as a result of the claimant's false statement or representation or knowing failure to disclose a material fact. The department shall apply the penalty as follows:

(a) an amount equal to the first fifteen percent of the amount of benefits overpaid as a result of the claimant's false statement or representation or knowing failure to disclose a material fact shall be deposited in the "unemployment compensation fund" set forth in Section 51-1-19 NMSA 1978.

(b) an amount equal to the remaining ten percent of the amount of benefits overpaid as a result of the claimant's false statement or representation or knowing failure to disclose a material fact shall be deposited in the Employment Security Department Fund.

(7) Any payments received from a claimant for repayment for any overpayment and civil penalty shall be applied first to the principal amount of the overpayment and any payment in excess of the principal amount of the overpayment shall be applied to pay the civil penalty.

B. Employer Fraud:

(1) Subsection D of Section 51-1-38 NMSA 1978 provides: "In addition to the penalty pursuant to subsection C of this section, any employing unit or officer or agent of an employing unit that makes a false statement or representation knowing it to be false or that knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any claimant eligible for benefits under the Unemployment Compensation Law shall be required to pay a civil penalty in an amount not to exceed \$10,000 as determined by rule established by the department. The penalty shall be collected in a manner provided in Subsection B of Section 51-1-36 NMSA 1978 and distributed to the fund."

(2) When imposing a civil penalty upon employers found to have made a false statement or representation knowing it to be false or to have knowingly failed to disclose a material fact to prevent or reduce the payment of benefits to any claimant eligible for benefits under the Unemployment Compensation Law, the department shall adhere to the following guidelines:

(a) an initial violation shall subject the employer to a maximum penalty of \$500.00;

(b) a second violation within a period of three years of the previous violation shall subject the employer to a penalty that is no less than \$500.00 and no more than \$1,000.00;

(c) a third violation within a period of three years of the most recent violation shall subject the employer to a penalty that is no less than \$1,000.00 and no more than \$2,000.00;

(d) a fourth or subsequent violation within a period of three years of the most recent violation shall subject the employer to a penalty that is no less than \$2,000.00 and no more than \$10,000.00.

(3) The department shall demand immediate repayment of any civil penalty

established pursuant to Subsection D of Section 51-1-38 NMSA 1978. A warrant of levy and lien shall be filed in all cases where the civil penalty is not repaid immediately. Recovery of the civil penalty may be by any means permitted by law. Recovery of the civil penalty may include court awarded costs. The court costs awarded by the court shall be added to the civil penalty.

(4) Payment of the civil penalty due to fraudulent misrepresentation or failure to disclose a material fact by any employing unit or officer or agent of an employing unit shall not preclude the department from requesting criminal proceedings against such employing unit or officer or agent of an employing unit.

[11.3.300.314 NMAC – Rp, 11.3.300.314 NMAC, 11/1/2018]

11.3.300.315 RETIREMENT INCOME:

A. Each eligible claimant who, pursuant to a pension or retirement plan financed in whole or in part by a base-period employer of the claimant shall have the weekly benefit amount reduced, but not below zero, by the prorated amount of the pension, retirement pay, annuity or other similar periodic or lump-sum payment that exceeds the percentage contributed to the plan by the eligible claimant. The maximum benefit amount payable shall also be reduced to an amount not more than 26 times the reduced weekly benefit amount. For purposes of this section periodic retirement income is not deemed "received", if, under the time period allowed by the Internal Revenue Code, 26 U.S.C. Section 3405 and related provisions, that amount is placed in a non-taxable qualifying retirement account.

B. A claimant's, monthly pension or retirement payment shall be multiplied by 12, then divided by 52 to determine the amount of pension or retirement income attributed to a week.

C. A lump-sum pension or retirement payment shall be considered a periodic payment

and the amount divided by 52 and allocated on a weekly basis beginning with the last week worked prior to separation from employment.
[11.3.300.315 NMAC – Rp, 11.3.300.315 NMAC, 11/1/2018]

**11.3.300.316
DETERMINATION OF
ELIGIBILITY OF FULL-TIME
STUDENTS:**

A. Except for students in approved training in accordance with Subsection E of Section 51-1-5 NMSA 1978 and 11.3.100.103 NMAC, the availability of benefits for full-time students shall be determined in accordance with the provisions of Subsection E of Section 51-1-5 NMSA 1978 and 11.3.300.316 NMAC.

B. The general requirement: Any claimants enrolled in an educational or training institution or program in a course of study who are able to work and are available for work and are actively seeking permanent full-time work or part-time work in accordance with Subsection I of Section 51-1-42 NMSA 1978, will not be denied from receiving benefits or waiting period credit.

C. Any claimants enrolled in an educational or training institution or program who can demonstrate by credible evidence that they are unequivocally attached to the labor force and available for full-time or part time permanent work for which they are presently qualified without regard to the hours spent in attending classes or doing homework will not be subject to denial if all of the following requirements are met:

(1) While working full-time or part-time and attending school, they became unemployed for reasons not attributable to the schooling and the hours of school attendance have not changed substantially since becoming unemployed, or they began attending school after becoming unemployed and no rearrangement of their school hours would be required to accommodate their normal and customary working hours.

(2) For school terms commencing after the filing of the unemployment claim, the claimants are required to submit to the department a completed student questionnaire, a schedule of classes and, if required by the department, an authorization of release of school records prior to the commencement of each school term. For school terms commencing prior to the filing of the unemployment claim, a student questionnaire and schedule of classes may be verified by the department prior to issuance of a determination that the claimants are available for full-time or part-time permanent work for the school term covered on the student questionnaire notwithstanding their status as full- students.

(3) Full time school is defined as 12 or more credit hours during a regular school term; six or more credit hours for summer term or graduate school or as defined by the school or training institution.

D. A determination of eligibility made in accordance with Subsection C of 11.3.300.316 NMAC shall apply only to the semester or period covered on the student questionnaire.

E. A claimant who receives a determination pursuant to Subsection C of 11.3.300.316 NMAC shall promptly transmit to the department any changes to class schedule during the school term. If the claimant adds or changes any classes, the claimant’s eligibility shall be subject to redetermination pursuant to Subsection C of 11.3.300.316 NMAC and Subsection A of 11.3.300.308 NMAC.

[11.3.300.316 NMAC – Rp, 11.3.300.316 NMAC, 11/1/2018]

**11.3.300.317 POST
EMPLOYMENT PAYMENTS:**

A. The following payments made to a claimant are considered wages that must be reported by the claimant at the time they are earned and which are deductible from any benefits otherwise payable to the claimant for the week or weeks covered by such payments:

(1) Wages in lieu of notice, meaning wages paid by an employer to an employee upon separation in lieu of providing a definite period of notice per a written employer contract, a clearly defined, uniformly applied, written employer policy in place prior to the date of separation, or a statutory requirement;

(2) Bonuses, including commissions, incentive pay, ratification lump sum payments (such as union layoff bonuses), retention or “stay” bonuses, and transfer or relocation bonuses;

(3) Supplemental unemployment payments whose premiums are paid by the employer;

(4) Vacation or leave pay, bereavement pay, continuation pay, or PTO payouts with a letter of intent to return to work within four weeks of separation; or

(5) Back pay
B. A claimant who receives payments listed in Subsection A of this part cannot establish a waiting period credit or receive benefits for the week or weeks covered by such payments, if such payments equal or exceed the claimant’s weekly benefit amount.

C. When a claimant leaves work voluntarily without good cause connected with work, is discharged for misconduct connected with work, or fails without good cause to apply for or accept an offer of suitable work and receives a payment listed in Subsection A of this part for services actually performed in any week for which benefits are claimed, these payments cannot be used to meet the requirement of wages earned during employment equal to or exceeding five times the weekly benefit amount of the claim to restore eligibility following a disqualification from benefits or filing a new claim under the provisions of Subsections A, B or C of Section 51-1-7 NMSA 1978.

D. The following payments are not considered wages and will not be deducted from any benefits otherwise payable to a claimant:

(1) Severance
 (2) Supplemental unemployment payments whose premiums are paid by the claimant
 (3) Vacation or leave pay bereavement pay, continuation pay, or PTO payouts without a letter of intent to return to work
 (4) Residuals
 [11.3.300.317 NMAC – Rp,
 11.3.300.317 NMAC, 11/1/2018]

11.3.300.318 BENEFITS DUE DECEASED PERSONS:

A. If prior to the claimant’s death, a claimant had filed a weekly certification, for benefits which were unpaid at the time of the claimant’s death, the benefits shall be paid to the deceased claimant’s court-appointed executor, administrator or personal representative. If the deceased claimant’s next of kin demonstrates, to the secretary’s satisfaction, that the court appointment of a fiduciary is impractical or legally unnecessary, then the benefits shall be paid to the next of kin. The order of priority for such payment shall be:

- (1) one-half to the surviving spouse, if residing with the deceased claimant at the time of death, and one-half to the natural parent or physical custodian of any minor children or any dependent disabled adult children of the deceased claimant (if more than one, per capita by children and not per stirpes);
- (2) if no minor children and no dependent disabled adult children of the deceased claimant, all to the surviving spouse; if no surviving spouse, all equally
- (3) to the surviving adult children; if no surviving adult children, all equally
- (4) to the surviving parents; if no surviving parents, all equally
- (5) to the surviving siblings; if no surviving siblings, all
- (6) to the deceased claimant’s heirs at law as

provided in the New Mexico Probate Code, Sections 45-2-101 through 45-2-114 NMSA 1978.

B. Whenever there is more than one legal heir in any of the above classes, payment may be made to any one of such group as agent for the others upon submission of proper evidence of authority and identification.

C. Application for payment of benefits must be made in writing and on the prescribed form within six months of the death of the decedent and must be accompanied by a certified copy of the death certificate. The application form shall set forth that the individual died intestate, that no executor, administrator or personal representative has been appointed to administer the deceased claimant’s estate, and the relationship of the person to the deceased. Any outstanding payments representing benefits claimed must accompany the application for payment for re-issuance.

D. Unless, within the time prescribed herein a claim is made for benefits due a deceased claimant by one of the parties herein authorized to make such claim, any payments issued directly to the deceased claimant shall be canceled, and any additional benefit payments due to the deceased claimant for weeks of unemployment prior to the claimant’s death shall be canceled, and all sums represented by benefits payable to the deceased claimant prior to the claimant’s death shall remain a part of the unemployment compensation fund.

[11.3.300.318 NMAC – Rp,
 11.3.300.318 NMAC, 11/1/2018]

11.3.300.319 STANDARDS FOR WAGES ELIGIBLE TO PURGE BENEFIT DISQUALIFICATION; BONA FIDE EMPLOYMENT:

In determining whether a claimant has earned wages to requalify for benefits after imposition of a disqualification under the provisions of Section 51-1-7 NMSA 1978, the following shall apply:

A. Wages required to requalify will include both covered and non-covered wages, but will not include earnings from self-employment or earnings excluded under the provisions of 11.3.300.317. NMAC.

B. The wages must have been earned for work performed subsequent to the effective date of the disqualification.

C. The proof required to establish wages for requalification may consist of check stubs or other payment records, employer statement or W-2 form if the W-2 establishes that the wages were paid after the effective date of the disqualification. When employers’ quarterly wage reports available to the department show the contended wage items, the department may accept the report as proof of wages. If necessary for a determination under Subsection B of 11.3.300.319 NMAC, the period during which the wages were earned shall be established by other proof.

D. Except for wages of which the department has knowledge through employers’ quarterly wage reports, the burden of establishing requalifying wages shall rest on the claimant. The department may, as it deems appropriate, assist the claimant in the verification of wages which the claimant states that the claimant has earned but of which the claimant has no proof or insufficient proof, by contacting the employers.

E. The wages must have been earned in “bona fide” employment. The basic test to determine whether employment is “bona fide” to purge a disqualification is whether the total facts lead a reasonable person to conclude that the claimant was in good faith genuinely attached to the labor market. A claimant is not engaged in bona fide employment when the service is performed for the purpose of purging a disqualification. No fixed rule can govern when employment is “bona fide,” but the following factors shall be considered by the department:

- (1) whether a valid, arms-length employer-employee relationship exists; this

excludes self-employment and incidental cash payments for services reportedly performed for relatives and friends;

(2) whether the work is of the type of which the claimant would accept referral on a full-time basis or for repeated temporary durations;

(3) whether the work bears any relation to the claimant's main occupational skills;

(4) whether the work is of the type that employers generally offer in the job market;

(5) whether the work is related to the particular employer's normal activity and customarily offered to the working public by this employer;

(6) whether the employer is registered for employment purposes with appropriate taxing and licensing authorities;

(7) the nature of the work, concerning hours to be worked, where the work is performed, and rate of pay;

(8) whether the employer can produce payroll records to substantiate the amount of payment and appropriate tax withholding information;

(9) whether the wages for the employment were equivalent to the claimant's wages in the claimant's usual occupation or last preceding employment; and

(10) the manner in which the work was obtained, and the nature and extent of the claimant's search for work.

[11.3.300.319 NMAC – Rp, 11.3.300.319 NMAC, 11/1/2018]

11.3.300.320 WORK SEARCH REQUIREMENT:

A. WORK SEARCHES: To qualify for continued benefits, a claimant must:

(1) be a member of a union with a hiring hall and meet the union requirements for job referral or placement; a union with a hiring hall is one that actively seeks to place its members in employment; or

(2) actively seek work by contacting a minimum number of different employers each week during the week for which benefits are claimed, as directed by department representatives. It is not mandatory that the work searches occur on different days of the week;

(a) a claimant may contact the same employer more than one time during a given week, which may count for multiple searches if the claimant applies for multiple jobs with the same employer so long as the applications are distinct and separate positions ;

(b) a claimant may list jobs applied for through the New Mexico department of workforce solutions workforce connection centers, the New Mexico state personnel office (SPO), America's job bank, Workforce Innovation and Opportunity Act (WIOA) partners and similar programs as approved from time to time by the department as valid work search contacts for each week of claim certification;

B. in order to qualify for continued benefits, interstate, if New Mexico is the liable state, claimants must seek work within the week for which benefits are being claimed and actively seek work by contacting a minimum of two different employers each week, or if a union member, actively seek work by contacting the union as required by the union in order to be eligible for job referral or placement

C. claimants must keep a record of the name, address and telephone number or electronic mail address of each employer contacted in the event of an audit; this information must be provided to department representatives upon request; the claimant must provide the requested information no later than 10 calendar days from the date of the department's request; failure to provide the required information without good cause may result in a denial of benefits for the week in question; the claimant must provide adequate information to allow verification of the contact; if the

information provided is insufficient to verify a valid work search occurred, benefits for the week in question will be denied; if a denial is imposed, the effective period may include weeks for which the claimant has already been paid benefits; such benefits would constitute an overpayment which would be recouped pursuant to Section 51-1-38 NMSA 1978; any denial imposed for failure to provide the required information may be appealed pursuant to 11.3.300.500.9 NMAC;

D. A claimant whose work search is deemed inadequate or invalid shall be denied benefits for the week in question. A rebuttable presumption that the claimant failed to meet the active work-search requirements for that week will be raised in all cases where a claimant's work search is deemed inadequate or invalid. In order to overturn the denial of benefits the claimant shall provide proof that the claimant did meet the active work-search requirements for that week. If a denial is imposed, the effective period may include weeks for which the claimant has already been paid benefits. Such benefits would constitute an overpayment which would be recouped pursuant to Section 51-1-38 NMSA 1978. Any denial imposed on the basis of an inadequate or invalid work search may be appealed pursuant to 11.3.300.500.9 NMAC.

E. The department may waive the work search requirements for claimants who the department determines are on temporary lay-off status from their regular full-time employment upon receipt of an assurance from the employer that the lay-off shall not exceed four weeks or upon receipt of an express offer in writing of substantially full-time work which will begin within a period not exceeding four weeks. Such waivers shall apply only to the four-week period covered on the determination. A claimant who receives a determination granting a waiver for the four-week period shall promptly transmit any change to the claimant's recall date or start date to the department. The

claimant's eligibility shall then be subject to redetermination pursuant to Subsection A of 11.3.300.308 NMAC. [11.3.300.320 NMAC – Rp, 11.3.300.320 NMAC, 11/1/2018]

11.3.300.321

REEMPLOYMENT SERVICES:

A claimant shall be eligible to receive benefits with respect to any week only if the claimant participates in reemployment services such as job search assistance services, if the claimant has been determined to be likely to exhaust regular benefits, and needs reemployment services pursuant to a profiling system established by the department, unless the department determines that:

- A. this claimant has completed such services; or
 - B. there is justifiable cause for the claimant's failure to participate in such services;
- [11.3.300.321 NMAC – Rp, 11.3.300.321 NMAC, 11/1/2018]

11.3.300.322 CLAIM

CANCELLATIONS:

A. A claim may be canceled by the claimant at any time after an initial or amended monetary determination even though final, provided that no disqualifying determination has been issued nor any benefits paid on the claim. Requests for cancellation must be made by the claimant or their authorized representative in the manner prescribed by the department and signed electronically or in writing by the claimant or the authorized representative of the claimant.

B. A request to change the date of a claim is deemed a request to cancel a claim and file a new claim.

(1) Only if the claimant does not qualify for benefits using the base period consisting of the first four of the last five completed quarters will the base period be changed.

(2) In situations where claimants might be benefited by a delayed filing, the department will advise the claimant that the claim determination will not

show any wages for the first quarter and that this is not an error. If using the new base period will cause an increase in the weekly benefit amount, the department will make an effort to advise the claimant of this option to file a claim at a future date.

C. Claimants who are eligible to file a combined wage claim may cancel such claim when New Mexico is the paying state if benefits have been paid on the combined wage claim. Cancellation will be authorized only if the claimant agrees in the manner prescribed by the department to reimburse all benefits paid by cash or by authorizing any other state to deduct the amount due from any benefit payments to which the claimant is eligible. Requests for cancellation must be made in the manner prescribed by the department signed electronically or in writing by the claimant or the authorized representative of the claimant.

[11.3.300.322 NMAC – Rp, 11.3.300.322 NMAC, 11/1/2018]

11.3.300.323 VOLUNTARY WITHHOLDING OF FEDERAL INCOME TAX:

A. The department shall provide each claimant filing a new claim for benefits with the following information in documented form:

- (1) benefits are subject to federal, state and local income tax;
- (2) requirements exist under federal law pertaining to estimated tax payments;
- (3) a claimant may elect to have federal income tax deducted and withheld from the claimant's benefit payments at the amount specified in the federal Internal Revenue Code, 26 U.S.C. Section 3402(p)(2); and
- (4) a claimant is permitted to change a previously elected withholding status one time during each benefit year.

B. Amounts deducted and withheld from benefits shall remain in the unemployment compensation fund until transferred to the internal revenue service as a payment of income tax.

C. The department shall follow all procedures specified by the United States department of labor and the internal revenue service pertaining to the deducting and withholding of federal income tax.

D. Amounts shall be deducted and withheld for the purpose of federal income tax payments only after amounts are deducted and withheld for any overpayments of benefits, child support obligations and food stamp over-issuances required to be deducted and withheld under the Unemployment Compensation Law.

[11.3.300.323 NMAC – Rp, 11.3.300.323 NMAC, 11/1/2018]

11.3.300.324 COLLECTIONS:

A. Deferred collections: From time to time, the department may, at its discretion determine that is it not economically efficient to actively pursue collection of certain overpayments due to the claimant's situation or the department's resources. The department may cease or forbear active collection activities for either finite period or an indefinite period depending on the circumstances. However, overpayment debts will remain on the department's books as an obligation owed by the claimant to the department. The department's discretion in this matter is final.

B. Money collected by the department with respect to an overpayment or civil penalty will be applied in the following order unless specifically directed otherwise:

- (1) costs incurred by the department to pursue collection of the overpayment or civil penalty;
- (2) the principal amount of the overpayment;
- (3) the portion of the civil penalty equal to fifteen percent of the overpayment amount which will be deposited in the Unemployment Compensation Fund set forth in Section 51-1-19 NMSA 1978; and
- (4) the portion of the civil penalty equal to ten percent of the overpayment of the amount which will be deposited in the employment security department fund

created pursuant to Section 51-1-34 NMSA.
[11.3.300.324 NMAC – Rp, 11.3.300.324 NMAC, 11/1/2018]

**11.3.300.325
OVERPAYMENTS AND
WAIVER OF OVERPAYMENTS
PURSUANT TO THE TRADE
ACTS AND TEMPORARY
EXTENDED UNEMPLOYMENT
COMPENSATION ACTS:**

A. The department shall use the process set forth herein to evaluate disputes of overpayments paid under the Trade Acts, the Trade Adjustment Assistance (TAA), Trade Readjustment Assistance (TRA) or the Emergency Unemployment Compensation (EUC) Acts under the following circumstances:

(1) When a decision of the department results in an overpayment, an appealable determination will be sent to the claimant. The claimant may file an appeal no later than 15 days from the date of the determination in accordance with 11.3.500 NMAC.

(2) At the department’s discretion, a request for review of an overpayment may be administratively initiated to determine if a waiver of overpayment will be approved. A waiver will be approved if the department determines that:

- (a)** the application was made timely;
- (b)** payment was made without the fault of the claimant; and
- (c)** requiring repayment would be contrary to equity and good conscience.

(3) The department’s affirmative finding of any one of the following factors of fault precludes a waiver:

- (a)** that the claimant knowingly made a material misrepresentation, which misrepresentation resulted in the overpayment; or
- (b)** that the claimant knowingly failed to disclose a material fact, which failure to disclose resulted in the overpayment; or

(c) that the claimant knew or should have known that he was not eligible for the payment; or

(d) that the department has previously issued a determination of fraud in regards to the overpayment.

(4) The department shall consider the following factors in determining whether, in equity and good conscience, the department should require repayment:

- (a)** whether the overpayment was the result of a decision on appeal;
- (b)** whether the claimant was given notice that repayment would be required in the event of reversal on appeal;
- (c)** whether the recovery of the overpayment would cause an extraordinary and lasting financial hardship to the claimant, resulting in the claimant’s inability to obtain minimal necessities of food, medicine and shelter for at least 30 days and period of financial hardship lasting at least three months, and

(d) whether, if recoupment from other benefits is proposed, the length of time of extraordinary and lasting financial hardship shall be the longest potential period of benefit eligibility as seen at the time of the request for waiver of determination.

(5) In determining whether fraud has occurred, the department shall consider the following factors:

- (a)** whether the claimant knowingly made, or cause another to make, a false statement or representation of a material fact resulting in the overpayment;
- (b)** whether the claimant knowingly failed, or caused another to fail, to disclose a material fact resulting in the overpayment.

B. If a determination of fraud is made, the claimant shall be ineligible for any further TAA, TRA or TEUC benefits and shall

be ineligible for waiver of any overpayment.

C. A finding that the overpayment was not the result of a decision on appeal or that the recovery would not cause extraordinary and lasting financial hardship shall preclude a waiver.

D. If a claimant fails, without good cause, to complete training, a job search or a relocation, any payment to such claimant that is not properly and necessarily expended in attempting to complete the activity shall constitute an overpayment. Such overpayments shall be recovered or waived according to the standards of fault, equity and good conscience contained in 11.3.300.325 NMAC.

E. In any event, no repayment shall be required or deduction made until a notice and an opportunity for fair hearing have been provided to the claimant in accordance with 11.3.500 NMAC, a determination has been issued by the department, and the determination has become final.

[11.3.300.325 NMAC – Rp, 11.3.300.325 NMAC, 11/1/2018]

11.3.300.326 DOMESTIC ABUSE:

A. A claimant is eligible for waiting period credit or benefits if the claimant voluntarily leaves work due to circumstances directly resulting from domestic abuse.

(1) “Domestic abuse” means abuse as defined in Section 40-13-2 NMSA 1978, and includes but is not limited to any incident by a household member against another household member resulting in: physical harm; severe emotional distress; bodily injury or assault; a threat causing imminent fear of bodily injury by any household member; criminal trespass; criminal damage to property; repeatedly driving by a residence or work place; telephone harassment; stalking; harassment, or harm or threatened harm to children.

(2) “Household member” means a spouse, former spouse, family

member, including relative, parent, present or former stepparent, present or former in-law, child or co-parent of a child, intimate partner or a person with whom the claimant has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member.

B.

DOCUMENTATION: The claimant shall provide documentation satisfactory to the department for the determination of whether the claimant has experienced domestic abuse for purposes of unemployment insurance benefits. The documentation shall be of a competent nature, reasonably susceptible to verification and bearing indicia of credibility. The documentation shall include a sworn statement by the claimant regarding the domestic abuse. The documentation may include information from individuals or organizations from whom the claimant has sought assistance for the domestic abuse, including but not limited to police or court records, documentation from a shelter worker, attorney at law, a member of the clergy, physician or other medical or mental health practitioner. If upon review of the claimant’s documentation, the department determines that further verification is warranted, the department may require additional supporting documentation.

C.

DETERMINATION: To be eligible for benefits as a result of domestic violence, the department must determine that the claimant is monetarily eligible for unemployment insurance compensation benefits. The existence of domestic violence shall be established by a preponderance of the evidence.

(1) Factors to be considered in determining if claimant voluntarily leaves work as a result of domestic violence include but are not limited to whether: claimant reasonably fears domestic abuse at or en route to or from claimant’s place of employment; claimant reasonably is required to relocate to another geographic area

to avoid future domestic abuse; claimant reasonably believes that leaving employment is necessary for the future safety of the claimant or the claimant’s family due to the domestic abuse; the abuse itself interfered with claimant’s ability to work, travel or prepare for work; claimant reasonably left the labor market to escape such abuse; the abuse occurred at claimant’s place of employment; the abuser’s relatives or friends or the abuser were co-workers of claimant or otherwise present at the worksite; claimant informed the employer and gave the employer the opportunity to ameliorate the domestic abuse within a reasonable period of time, but the employer would not or could not do so; claimant has filed a civil or criminal proceeding against an alleged abuser; however nothing in this provision shall be construed as requiring the filing of a civil or criminal proceeding as a prerequisite to establishing the existence of domestic violence.

(2) Claimant must indicate at the time of filing the claim that the reason for leaving employment was as a result of qualifying domestic abuse.

(3) Claimant must provide evidence tending to prove the existence of qualifying domestic abuse within 10 days of the filing of the claim.

(4) Claimant will be eligible to receive benefits retroactively to the date of filing if adequate documentation is received within 10 days of the filing of the claim, if otherwise eligible for benefits.

(5) If no documentation is received within 10 days of the filing of the claim, an initial determination will be issued denying the claim on the basis of domestic abuse.

(6) If claimant subsequently submits documentation tending to demonstrate the existence of domestic abuse, a determination will be made on the basis of the subsequent documentation submitted. Claimant will not be eligible to receive benefits retroactively to the

date of filing but will be eligible to receive benefits retroactively to the date of submission of the subsequent documentation supporting domestic abuse.

(7) Only an alleged victim of domestic abuse may obtain benefits under this provision; an alleged perpetrator may not.

D. If domestic abuse is proven, a determination will be issued identifying domestic abuse as the reason for the separation and a contributing employer’s account will not be charged any portion of benefits paid.

[11.3.300.326 NMAC – Rp, 11.3.300.326 NMAC, 11/1/2018]

11.3.300.327 DEPENDENTS’ ALLOWANCE:

A. A claimant is eligible to receive benefits in the amount of \$25 for each unemancipated child, up to a maximum of two children, and not to exceed fifty percent of the claimant’s weekly benefit amount.

B. The claimant shall declare the dependents’ allowance on the date that the claimant files an initial claim for the benefit year.

C. Within 14 days of an application for the dependents’ allowance, the claimant must supply verification that, for each child for whom the allowance is claimed, the child is the claimant’s child, under the age of 18, unemancipated and the child is:

(1) in fact dependent on and wholly or mainly supported by the claimant; or

(2) in the legal custody of the claimant pending adjudication of a petition for adoption filed in a court of competent jurisdiction; or

(3) the subject of a decree or order from a court of competent jurisdiction requiring the claimant to contribute to the dependent’s support; and no other claimant is receiving dependents’ allowance benefits for that child under the Unemployment Compensation Law.

D. Definitions: “Child” means a person:

(1) who is related to the claimant within the third degree of consanguinity; or

(2) who is a stepchild of the claimant by virtue of the claimant's marriage to the child's biological or legal parent and that biological or legal parent has sole or primary legal and physical custody of the child and the child physically resides with the claimant; or

(3) who is in the claimant's legal or physical custody pursuant to a decree or order from a court of competent jurisdiction including but not limited to orders of custody, guardianship, conservatorship, trusteeship or foster care;

(4) "wholly or mainly supporting" means that the claimant who is applying for the dependents' allowance is in fact furnishing contemporaneously more than fifty percent of the actual cost of support for the dependent.

E. The claimant has the burden of establishing to the satisfaction of the department that the claimant is actually furnishing more than one-half of the cost of support of the child.

F. No fixed dollar amount shall be used to make the determination regarding support.

(1) The department considers "cost of support" to include but is not limited to a reasonable proration of the expenses of shelter (including but not limited to household grocery, toiletries, household cleaning products, rent or mortgage payments, customary utilities such as water, sewer, gas, electricity and basic telephone), school expenses of the child (including but not limited to tuition, books, clothing and supplies for special school or educational activities), medical and dental expenses including actual payments and payments of insurance premiums; payment of expenses related to any special needs of the child.

(2) The department may also use any child support worksheets utilized by a court of competent jurisdiction in determining the amount of child

support due from each parent.

G. Verification:

(1) Claimant shall not be eligible to claim a dependents' allowance for any person unless the dependent has been issued a social security number or other federal identification sufficient for purposes of verification.

(2) A claimant who is otherwise eligible for benefits and who has not yet submitted the required dependents' allowance verification shall not be paid the dependents' allowance unless and until verification satisfactory to the department is presented.

(3) Upon receipt of verification within 14 days of the application the dependents' allowance shall be paid retroactively to the date of the application.

(4) If the claimant submits verification after 14 days, the claimant will not be eligible to receive benefits retroactively to the date of the application but will be eligible to receive benefits retroactively to the date of submission of verification satisfactory to the department.

H. Changes in eligibility:

(1) During the life of the claim, should claimant become eligible for a dependents' allowance, claimant may request from the department that the dependents' allowance be granted. Claimant will be required to provide proof that the dependent for which the benefit is being sought was not a dependent at the time of the filing of the initial claim. The department will issue a written determination whether claimant is granted or denied the dependents' allowance.

(2) During the life of the claim, should claimant no longer be eligible to claim a dependents' benefit for one or more of the dependents for whom claimant is receiving the dependents' allowance, claimant is required to report to the department within five days any such change in circumstances. A claimant who fails to report such change in circumstances may be assessed an overpayment.

(3) Should the circumstances of who provides support for the dependent change during the life of the claim, the claimant shall inform the department within five days of the change of circumstances.

I. Multiple claims: Only one claimant may receive a dependents' allowance for any specific dependent. In the event two claimants each request to receive the dependents' allowance for the same child, upon notification of the dispute, the department shall continue making payments to the claimant who the department initially determined was eligible to receive benefits for the dependent. A later claimant may demonstrate a superior claim to the dependents' allowance for a child by producing documentation showing that the later claimant has a paramount right to claim the dependents' allowance, including but not limited to:

(1) a custody decree or order from a court of competent jurisdiction finding that the dependent child is or should be in the primary physical custody of the later claimant or that the later claimant is obligated to provide more than fifty percent of the dependent child's support and that the later claimant is in fact the primary physical custodian of the dependent child or is in fact providing more than fifty percent of the dependent child's support;

(2) a custody decree or order from a court of competent jurisdiction or similar document including, but not limited to IRS form 8332, finding that the later claimant is eligible to claim the child as a dependent for official purposes.

J. Once a claimant has been determined to be eligible for the dependents' allowance that determination will remain in effect for the life of the claim, subject to the provisions of Subsection H of 11.3.300.327 NMAC.

K. Payment of regular benefits will not be delayed due to any delay in processing the application for dependents' allowance.

L. A contributing employer's account will not be

charged any portion of benefits paid for the dependents' allowance. [11.3.300.328 NMAC – Rp, 11.3.300.328 NMAC, 11/1/2018]

HISTORY OF 11.3.300 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under ESD 74-1, Unemployment Compensation Law of New Mexico and Rules and Regulations of the Commission, filed 10-1-74; Regulation 301, Filing Initial, Additional and Reopened Claims, amended and filed 5-23-90; Regulation 303, Timely Response to Request for Information, amended and filed 5-4-90; Regulation 304, Late Filing of Continued Claims, amended and filed 5-4-90; Regulation 306, Claim Registration Form, amended and filed 9-20-94; Regulation 308.1, Termination of Continued Claims, amended and filed 11-5-87; Regulation 310, Interstate Claims, amended and filed 8-17-90; Regulation 311, Combined Wage Claims, amended and filed 8-17-90; Regulation 314, Fraudulent Claims, amended and filed 10-16-90; Regulation 315, Retirement Income, amended and filed 9-20-94; Regulation 316, Availability of Full-Time Students, amended and filed 1-8-90; Regulation 317, Wages in Lieu of Notice, Backpay for Loss of Employment, or Vacation Pay and Benefit Rights, amended and filed 9-20-94; Regulation 318, Benefits Due Deceased Persons, amended and filed 5-4-90; Regulation 319, Standards for Wages Eligible to Purge Benefit Disqualification; Bona Fide Employment, amended and filed 6-14-91; Regulation 320, Work Search Requirement, amended and filed 9-20-94; Regulation 321, Reemployment Services, amended and filed 9-20-94; Regulation 322, Claim Cancellations, amended and filed 9-20-94.

History of Repealed Material:

11.3.300 NMAC Labor and Workers Compensation, Employment Security,

Claims Administration, filed 1-1-2003 – Repealed effective November 1, 2018.

WORKFORCE SOLUTIONS DEPARTMENT

**TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 2 JOB TRAINING
PART 2 EQUAL EMPLOYMENT OPPORTUNITY
IN APPRENTICESHIP STATE PLAN**

11.2.2.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions, Labor Relations Division. [11.2.2.1 NMAC - Rp, 11.2.2.1 NMAC, 11/1/2018]

11.2.2.2 SCOPE: All apprenticeship programs registered with the New Mexico department of workforce solutions. [11.2.2.2 NMAC - Rp, 11.2.2.2 NMAC, 11/1/2018]

11.2.2.3 STATUTORY AUTHORITY: Sections 50-7-1 through 50-7-7 NMSA 1978. [11.2.2.3 NMAC - Rp, 11.2.2.3 NMAC, 11/1/2018]

11.2.2.4 DURATION: Permanent. [11.2.2.4 NMAC - Rp, 11.2.2.4 NMAC, 11/1/2018]

11.2.2.5 EFFECTIVE DATE: November 1, 2018, unless a later date is written at the end of section. [11.2.2.5 NMAC - Rp, 11.2.2.5 NMAC, 11/1/2018]

11.2.2.6 OBJECTIVE: Scope and purpose. This plan sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the New Mexico department of workforce solutions. These policies and procedures apply to the recruitment and selection of

apprentices, and to all conditions of employment and training during apprenticeship and the procedures established provide for review of apprenticeship programs, for registering apprenticeship programs, for processing complaints, and for deregistering non-complying apprenticeship programs. The purpose of this plan is to promote equality of opportunity in apprenticeship by prohibiting discrimination based on age (40 or older), disability, race, color, religion, national origin, genetic information, sexual orientation or sex in apprenticeship programs, by requiring affirmative action to provide equal opportunity in such apprenticeship programs, and by coordinating this part with other equal opportunity programs. [11.2.2.6 NMAC - Rp, 11.2.2.6 NMAC, 11/1/2018]

11.2.2.7 DEFINITIONS:
A. “Administrator” means the administrator of the office of apprenticeship (OA), or any person specifically designated by the administrator.

B. “Apprentice” means a worker at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn an apprenticeable occupation as provided in 11.2.3.22 NMAC under standards of apprenticeship fulfilling the requirements of 11.2.3.23 NMAC.

C. “Apprenticeship committee” means those persons designated by the sponsor to administer the program. A committee may be either joint or non-joint, as follows:

(1) A joint committee is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s).

(2) A non-joint committee, which may also be known as a unilateral or group non-joint (which may include employees) committee, has employer representatives but does not have a bona fide collective bargaining agent

as a participant.

D. “Apprenticeship program” means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, as required under 11.2.3 NMAC and 11.2.2 NMAC, including such matters as the requirement for a written apprenticeship agreement.

E. “Department” means the New Mexico department of workforce solutions.

F. “Direct threat” means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a “direct threat” must be based on an individualized assessment of the individual’s present ability to safely perform the essential functions of the job. This assessment must be based on a reasonable medical judgement that relies on the most current medical knowledge or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

- (1) the duration of the risk;
- (2) the nature and severity of the potential hazard;
- (3) the likelihood that the potential harm will occur; and
- (4) the imminence of the potential harm.

G. “Disability” means, with respect to an individual:

- (1) A physical or mental impairment that substantially limits one or more major life activities of such individual;
- (2) A record of such an impairment; or
- (3) Being regarded as having such an impairment.

H. “EEO” means equal employment opportunity.

I. “Electronic media” means media that utilize electronics or electromechanical energy for the end user (audience) to access the content;

and includes, but is not limited to, electronic storage media, transmission media, the Internet, extranet, lease lines, dial-up lines, private networks, and the physical movement of removable or transportable electronic media or interactive distance learning.

J. “Employer” means any person or organization employing an apprentice whether or not such person or organization is party to an apprenticeship agreement with the apprentice.

K. “Ethnicity” for purposes of recordkeeping and affirmative action, has the same meaning as under the office of management and budget’s standards for the classification of federal data on race and ethnicity, or any successor standards. Ethnicity thus refers to the following designations:

- (1) Hispanic or Latino - A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

- (2) Not Hispanic or Latino.

L. “Genetic information” means:

- (1) Information about:
 - (a) an individual’s genetic tests;
 - (b) the genetic tests of that individual’s family members;
 - (c) the manifestation of disease or disorder in family members of the individual (family medical history);
 - (d) an individual’s request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; or
 - (e) the genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

- (2) Genetic

information does not include information about the sex or age of the individual, the sex or age of family members, or information about the race or ethnicity of the individual or family members that is not derived from a genetic test.

M. “Journeyworker” means a worker who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. (Use of this term may also refer to a mentor, technician, specialist or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical or formal training).

N. “Major life activities” include, but are not limited to: Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

O. “Office of apprenticeship” (OA) means the office designated by the employment and training administration of the U.S. department of labor to administer the national registered apprenticeship system or its successor organization.

P. “Physical or mental impairment” means:

- (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense

organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

(2) any mental or psychological disorder, such as intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Q. "Pre-apprenticeship program" means a training model designed to assist individuals who do not currently possess the minimum requirements for selection into an apprenticeship program to meet the minimum selection criteria established in a program sponsor's apprenticeship standards required under 11.2.3 NMAC and which maintains at least one documented partnership with a registered apprenticeship program. It involves a form of structured workplace education and training in which an employer, employer group, industry association, labor union, community-based organization, or educational institution collaborates to provide formal instruction that will introduce participants to the competencies, skills, and materials used in one or more apprenticeable occupations. It may also involve provision of supportive services such as transportation, child care, and income support to assist participants in the successful completion of the pre-apprenticeship program.

R. "Qualified applicant or apprentice" is an individual who, with or without reasonable accommodation, can perform the essential functions of the apprenticeship program for which the individual applied or is enrolled.

S. "Race" for purposes of record keeping and affirmative action, has the same meaning as under the office of management and budget's standards for the classification of federal data on race and ethnicity or any successor standards. Race thus refers to the following designations:

(1) White - A person having origins in any of

the original peoples of Europe, the Middle East, or North Africa.

(2) Black or African American - A person having origins in any of the black racial groups of Africa.

(3) Native Hawaiian or other Pacific islander - A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific islands.

(4) Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(5) American Indian or Alaska native - A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

T. "Reasonable accommodation"

(1) The term reasonable accommodation means:

(a) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

(b) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(c) modifications or adjustments that enable a sponsor's apprentice with a disability to enjoy equal benefits and privileges of apprenticeship as are enjoyed by its other similarly situated apprentices without disabilities.

(2) Reasonable accommodations may include, but are not limited to:

(a) making existing facilities used by

apprentices readily accessible to and usable by individuals with disabilities; and

(b) job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation it may be necessary for the sponsor to initiate an informal, interactive process with the qualified individual in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

U. "Registration agency" means the New Mexico department of workforce solutions.

V. "Selection procedures" means any measure, combination of measures, or procedure used as a basis for any decision in apprenticeship. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and unscored application forms.

W. "Sponsor" means any person, association, committee or organization operating an apprenticeship program and in whose name the program is (or is to be) registered and approved.

X. "Undue hardship":

(1) In general, undue hardship means, with respect to the provision of an accommodation, significant difficulty or expense incurred by a sponsor, when considered in light of the factors set forth in paragraph (2) of this definition.

(2) Factors to be considered. In determining whether an accommodation would impose an undue hardship on a sponsor, factors to be considered include:

(a) the nature and net cost of the accommodation needed under this part, taking into consideration the availability of tax credits and deductions, or outside funding;

(b) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(c) the overall financial resources of the sponsor, the overall size of the registered apprenticeship program with respect to the number of apprentices, and the number, type and location of its facilities;

(d) the type of operation or operations of the sponsor, including the composition, structure and functions of the workforces of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the sponsor; and

(e) the impact of the accommodation upon the operation of the facility, including the impact on the ability of other apprentices to perform their duties and the impact on the facility's ability to conduct business.
[11.2.2.7 NMAC - Rp, 11.2.2.7 NMAC, 11/1/2018]

11.2.2.8 EQUAL OPPORTUNITY STANDARDS APPLICABLE TO ALL SPONSORS:

A. Discrimination prohibited:

(1) It is unlawful for a sponsor of a registered apprenticeship program to discriminate against an apprentice or applicant for apprenticeship on the basis of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability with regard to:

(a) recruitment, outreach, and selection procedures;

(b) hiring, upgrading, periodic advancement, promotion, award of tenure, demotion, transfer, layoff, and rehiring;

(c) rotation among work processes;

(d) imposition of penalties or other disciplinary action;

(e) rates of pay or any other form of compensation and changes in compensation;

(f) conditions of work;

(g) hours of work and hours of training provided;

(h) job assignments;

(i) leaves of absence, sick leave, or any other leave; and

(j) any other benefit, term, condition, or privilege associated with apprenticeship.

(2) Discrimination standards and defenses.

(a) Race, color, religion, national origin, sex, or sexual orientation. In implementing this section, the department will look to the legal standards and defenses applied under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., and Executive Order 11246, as applicable, in determining whether a sponsor has engaged in an unlawful employment practice.

(b) Disability. With respect to discrimination based on a disability, the registration agency will apply the same standards, defenses, and exceptions to the definition of disability as those set forth in title I of the Americans with Disabilities Act (ADA), 42 U.S.C. 12112 and 12113, and the implementing regulations promulgated by the equal employment opportunity

commission (EEOC) at 29 CFR part 1630, which include, among other things, the standards governing reasonable accommodation, medical examinations and disability-related inquiries, qualification standards, and direct threat defense. The interpretive guidance on title I of the ADA set out as an appendix to part 1630 issued pursuant to title I may be relied upon for guidance in complying with the nondiscrimination requirements of this part with respect to the treatment of individuals with disabilities.

(c) Age. The department will apply the same standards and defenses for age discrimination as those set forth in the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 623, and the implementing regulations promulgated by the EEOC at 29 CFR part 1625.

(d) Genetic information. The department will apply the same standards and defenses for discrimination based on genetic information as those set forth in the Genetic Information Nondiscrimination Act (GINA), 29 U.S.C. 2000ff et seq., and the implementing regulations promulgated by the EEOC at 29 CFR part 1635.

B. General duty to engage in affirmative action: For each registered apprenticeship program, a sponsor is required to take affirmative steps to provide equal opportunity in apprenticeship. These steps include:

(1) Assignment of responsibility. The sponsor will designate an individual or individuals with appropriate authority under the program, such as an apprenticeship coordinator, to be responsible and accountable for overseeing its commitment to equal opportunity in registered apprenticeship, including the development and implementation of an affirmative action program as required by 11.2.2.9 NMAC. This individual must have the resources, support of, and access to the sponsor leadership to ensure effective implementation. This individual will be responsible for:

(a) monitoring all registered apprenticeship activity to ensure compliance with the nondiscrimination and affirmative action obligations required by this part;

(b) maintaining records required under this part; and

(c) generating and submitting reports as may be required by the department.

(2) Internal dissemination of equal opportunity policy. The sponsor must inform all applicants for apprenticeship, apprentices, and individuals connected with the administration or operation of the registered apprenticeship program of its commitment to equal opportunity and its affirmative action obligations. In addition, the sponsor must require that individuals connected with the administration or operation of the apprenticeship program take the necessary action to aid the sponsor in meeting its nondiscrimination and affirmative action obligations under this part. A sponsor, at a minimum, is required to:

(a) publish its equal opportunity pledge as set forth in Subsection C of this section, in the apprenticeship standards required under Subsection B of 11.2.3.23 NMAC and in appropriate publications, such as apprentice and employee handbooks, policy manuals, newsletters, or other documents disseminated by the sponsor or that otherwise describe the nature of the sponsorship;

(b) post its equal opportunity pledge on bulletin boards, including through electronic media, such that it is accessible to all apprentices and applicants for apprenticeship;

(c) conduct orientation and periodic information sessions for individuals connected with the administration or operation of the apprenticeship program, including all apprentices and journeyworkers who regularly work with apprentices, to inform

and remind such individuals of the sponsor's equal employment opportunity policy with regard to apprenticeship, and to provide the training required by Paragraph 4 of Subsection B of this section; and

(d) maintain records necessary to demonstrate compliance with these requirements and make them available to the registration agency upon request.

(3) Universal outreach and recruitment. The sponsor will implement measures to ensure that its outreach and recruitment efforts for apprentices extend to all persons available for apprenticeship within the sponsor's relevant recruitment area without regard to race, sex, ethnicity, or disability. In furtherance of this requirement, the sponsor must:

(a) Develop and update annually a list of current recruitment sources that will generate referrals from all demographic groups within the relevant recruitment area. Examples of relevant recruitment sources include: The public workforce system's one-stop career centers and local workforce investment boards, community-based organizations, community colleges, vocational, career and technical schools, pre-apprenticeship programs, and federally-funded, youth job-training programs such as YouthBuild and Job Corps or their successors;

(b) Identify a contact person, mailing address, telephone number, and email address for each recruitment source; and

(c) Provide recruitment sources advance notice, preferably 30 days, of apprenticeship openings so that the recruitment sources can notify and refer candidates. Such notification must also include documentation of the sponsor's equal opportunity pledge specified in Subsection C of this section.

(4) Maintaining apprenticeship programs free from harassment, intimidation,

and retaliation. The sponsor must develop and implement procedures to ensure that its apprentices are not harassed because of their race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability and to ensure that its apprenticeship program is free from intimidation and retaliation as prohibited by 11.2.2.22 NMAC. To promote an environment in which all apprentices feel safe, welcomed, and treated fairly, the sponsor must ensure the following steps are taken:

(a) Providing anti-harassment training to all individuals connected with the administration or operation of the apprenticeship program, including all apprentices and journeyworkers who regularly work with apprentices. This training must not be a mere transmittal of information, but must include participation by trainees, such as attending a training session in person or completing an interactive training online. The training content must include, at a minimum, communication of the following:

(i) that harassing conduct will not be tolerated;

(ii) the definition of harassment and the types of conduct that constitute unlawful harassment on the basis of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability; and

(iii) the right to file a harassment complaint under 11.2.2.19 NMAC.

(b) Making all facilities and apprenticeship activities available without regard to race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability except that if the sponsor provides restrooms or changing facilities, the sponsor must provide separate or single-user restrooms and changing facilities to assure privacy between the sexes;

(c) Establishing and implementing

procedures for handling and resolving complaints about harassment and intimidation based on race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability, as well as complaints about retaliation for engaging in protected activity described in 11.2.2.22 NMAC.

(5)

Compliance with federal and state equal employment opportunity laws. The sponsor must comply with all other applicable federal and state laws and regulations that require equal employment opportunity without regard to race, color, religion, national origin, sex (including pregnancy and gender identity, as applicable), sexual orientation, age (40 or older), genetic information, or disability. Failure to comply with such laws if such noncompliance is related to the equal employment opportunity of apprentices or graduates of such an apprenticeship program under this part is grounds for deregistration or the imposition of other enforcement actions in accordance with 11.2.2.20 NMAC.

C. Equal opportunity pledge:

(1) Each sponsor of an apprenticeship program must include in its standards of apprenticeship and apprenticeship opportunity announcements the following equal opportunity pledge: [Name of sponsor] will not discriminate against apprenticeship applicants or apprentices based on race, color, religion, national origin, sex (including pregnancy and gender identity), sexual orientation, genetic information, or because they are an individual with a disability or a person 40 years old or older. [Name of sponsor] will take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under Title 29 of the Code of Federal Regulations, part 30 and 11.2.2 NMAC.

(2) The nondiscrimination bases listed in this pledge may be broadened to

conform to consistent state and local requirements. Sponsors may include additional protected bases but may not exclude any of the bases protected by this part.

D. Compliance:

(1) Current sponsors: A sponsor that has a registered apprenticeship program as of the effective date of this plan must comply with all obligations of this section within 180 days of the effective date of this plan.

(2) New sponsors: A sponsor registering with the department after the effective date of this plan shall comply with all obligations of this section upon registration or 180 days after the effective date of this plan, whichever is later.

[11.2.2.8 NMAC - Rp, 11.2.2.8 NMAC, 11/1/2018]

11.2.2.9 AFFIRMATIVE ACTION PLANS:

A. Definition and purpose. As used in this part:

(1) An affirmative action program is designed to ensure equal opportunity and prevent discrimination in apprenticeship programs. An affirmative action program is more than mere passive nondiscrimination. Such a program requires the sponsor to take affirmative steps to encourage and promote equal opportunity, to create an environment free from discrimination, and to address any barriers to equal opportunity in apprenticeship. An affirmative action program is more than a paperwork exercise. It includes those policies, practices, and procedures, including self-analysis, that the sponsor implements to ensure that all qualified applicants and apprentices are receiving an equal opportunity for recruitment, selection, advancement, retention and every other term and privilege associated with apprenticeship. An affirmative action program should be a part of the way the sponsor regularly conducts its apprenticeship program.

(2) A central premise underlying affirmative action

is that, absent discrimination, over time a sponsor's apprenticeship program, generally, will reflect the sex, race, ethnicity, and disability profile of the labor pools from which the sponsor recruits and selects. Consistent with this premise, affirmative action programs contain a diagnostic component which includes quantitative analysis designed to evaluate the composition of the sponsor's apprenticeship program and compare it to the composition of the relevant labor pools. If women, individuals with disabilities, or individuals from a particular minority group, for example, are not being admitted into apprenticeship at a rate to be expected given their availability in the relevant labor pool, the sponsor's affirmative action program must include specific, practical steps designed to address any barriers to equal opportunity that may be contributing to this underutilization.

(3) Effective affirmative action programs include internal auditing and reporting systems as a means of measuring the sponsor's progress toward achieving an apprenticeship program that would be expected absent discrimination.

(4) An affirmative action program also ensures equal opportunity in apprenticeship by incorporating the sponsor's commitment to equality in every aspect of the apprenticeship program. Therefore, as part of its affirmative action program, a sponsor must monitor and examine its employment practices, policies and decisions and evaluate the impact such practices, policies and decisions have on the recruitment, selection and advancement of apprentices. It must evaluate the impact of its employment and personnel policies on minorities, women, and persons with disabilities, and revise such policies accordingly where such policies or practices are found to create a barrier to equal opportunity.

(5) The commitments contained in an affirmative action program are not intended, and must not be used, to discriminate against any qualified

applicant or apprentice on the basis of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability.

B. Adoption of affirmative action programs:

Sponsors other than those identified in Subsection D of this section must develop and maintain an affirmative action program, setting forth that program in a written plan. The components of the written plan, as detailed in 11.2.2.10 NMAC through 11.2.2.14 NMAC, must be developed in accordance with the respective compliance dates and made available to the department any time thereafter upon request.

C. Contents of affirmative action programs: An affirmative action program must include the following components in addition to those required of all sponsors by Subsection A of 11.2.2.8 NMAC:

- (1) utilization analysis for race, sex, and ethnicity, as described in 11.2.2.10 NMAC;
- (2) establishment of utilization goals for race, sex, and ethnicity, as described in 11.2.2.11 NMAC;
- (3) utilization goals for individuals with disabilities, as described in 11.2.2.12 NMAC;
- (4) targeted outreach, recruitment, and retention, as described in 11.2.2.13 NMAC;
- (5) review of personnel processes, as described in 11.2.2.14 NMAC; and
- (6) invitations to self-identify, as described in 11.2.2.16 NMAC.

D. Exemptions:

(1) Programs with fewer than five apprentices. A sponsor is exempt from the requirements of Subsections (B) and (C) of this section if the sponsor's apprenticeship program has fewer than five apprentices registered, unless such program was adopted to circumvent the requirements of this section.

(2) Programs subject to approved equal employment opportunity programs.

A sponsor is exempt from the requirements of Subsections (B) and (C) of this section if the sponsor both submits to the registration agency satisfactory evidence that it is in compliance with an equal employment opportunity program providing for affirmative action in apprenticeship, including the use of goals for any underrepresented group or groups of individuals, which has been approved as meeting the requirements of either title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*) and agrees to extend such program to include individuals with disabilities, or if the sponsor submits satisfactory evidence to the department that it is in compliance with an equal employment opportunity program providing for affirmative action in apprenticeship, including the use of goals for any underrepresented group or groups of individuals, which has been approved as meeting the requirements of both Executive Order 11246, as amended, and section 503 of the Rehabilitation Act, as amended (29 U.S.C. 793), and their implementing regulations at Title 41 of the Code of Federal Regulations, Chapter 60: Provided, that programs approved, modified or renewed subsequent to the effective date of this amendment will qualify for this exception only if the goals for any underrepresented group for the selection of apprentices provided for in such programs are likely to be equal to or greater than the goals required under this part.

E. Written affirmative action plans: Sponsors required to undertake an affirmative action program must create and update a written document memorializing and discussing the contents of the program set forth in Subsection C of this section.

- (1) Compliance
 - (a) Apprenticeship programs existing as of the effective date of this plan. The initial written affirmative action plan for such programs must be completed within 180 days of the effective date

of this plan or within two years of the date of registration, whichever is later. The written affirmative action plan for such programs must be updated every time the sponsor completes workforce analysis required by Subsection B of 11.2.2.10 NMAC and Paragraph 2 of Subsection D of 11.2.2.12 NMAC.

(b) Apprenticeship programs registered after the effective date of this plan. The initial written affirmative action plan for such programs must be completed within two years of registration. The written affirmative action plan for such programs must be updated every time the sponsor completes workforce analysis required by Subsection B of 11.2.2.10 NMAC and Paragraph 2 of Subsection D of 11.2.2.12 NMAC. [11.2.2.9 NMAC - Rp, 11.2.2.9 NMAC, 11/1/2018]

11.2.2.10 UTILIZATION ANALYSIS FOR RACE, SEX, AND ETHNICITY:

A. Purpose: The purpose of the utilization analysis is to provide sponsors with a method for assessing whether possible barriers to apprenticeship exist for particular groups of individuals by determining whether the race, sex, and ethnicity of apprentices in a sponsor's apprenticeship program is reflective of persons available for apprenticeship by race, sex, and ethnicity in the relevant recruitment area. Where significant disparity exists between availability and representation, the sponsor will be required to establish a utilization goal pursuant to 11.2.2.11 NMAC.

B. Analysis of apprenticeship program workforce:

(1) **Process.** Sponsors must analyze the race, sex, and ethnic composition of their apprentice workforce. This is a two-step process. First, each sponsor must group all apprentices in its registered apprenticeship program by occupational title. Next, for each occupation represented, the sponsor must identify the race, sex, and ethnicity of its apprentices within that occupation.

(2)
Schedule of analysis. Each sponsor is required to conduct an apprenticeship program workforce analysis at each compliance review, and again if and when three years have passed without a compliance review. This updated workforce analysis should be compared to the utilization goal established at the sponsor's most recent compliance review to determine if the sponsor is underutilized, according to the process in Subsection D of this section.

(3)
Compliance date.
 (a)
 Sponsors registered with the department as of the effective date of this plan: A sponsor must conduct its first workforce analysis, pursuant to this section, no later than 180 days after the effective date of this plan or within two years of the date of registration, whichever is later.

(b)
 New sponsors: A sponsor registering with the department after the effective date of this plan must conduct its initial workforce analysis pursuant to this section no later than two years after the date of registration.

C. Availability analysis:
 (1) The purpose of the availability analysis is to establish a benchmark against which the demographic composition of the sponsor's apprenticeship program can be compared in order to determine whether barriers to equal opportunity may exist with regard to the sponsor's apprenticeship program.

(2)
 Availability is an estimate of the number of qualified individuals available for apprenticeship by race, sex, and ethnicity expressed as a percentage of all qualified persons available for apprenticeship in the sponsor's relevant recruitment area.

(3)
 In determining availability, the following factors must be considered for each major occupation group represented in the sponsor's registered apprenticeship program standards:

(a)
 the percentage of individuals who are eligible for enrollment in the apprenticeship program within the sponsor's relevant recruitment area broken down by race, sex, and ethnicity; and

(b)
 the percentage of the sponsor's employees who are eligible for enrollment in the apprenticeship program broken down by race, sex, and ethnicity.

(4) In determining availability, the relevant recruitment area is defined as the geographical area from which the sponsor usually seeks or reasonably could seek apprentices. The sponsor must identify the relevant recruitment area in its written affirmative action plan. The sponsor may not draw its relevant recruitment area in such a way as to have the effect of excluding individuals based on race, sex, or ethnicity from consideration, and must develop a brief rationale for selection of that recruitment area.

(5)
 Availability will be derived from the most current and discrete statistical information available. Examples of such information include census data, data from local job service offices, and data from colleges or other training institutions.

(6) Sponsors, working with the registration agency, will conduct availability analysis at each compliance review.

D. Rate of utilization:
 To determine the rate of utilization, the sponsor, working with the department, must group each occupational title in its apprenticeship workforce by major occupation group and compare the racial, sex, and ethnic representation within each major occupation group to the racial, sex, and ethnic representation available in the relevant recruitment area, as determined in Subsection C of this section. When the sponsor's utilization of women, Hispanics or Latinos, or a particular racial minority group is significantly less than would be reasonably expected given the availability of such individuals for

apprenticeship, the sponsor must establish a utilization goal for the affected group in accordance with the procedures set forth in 11.2.2.11 NMAC. Sponsors are not required or expected to establish goals where no significant disparity in utilization rates has been found.
 [11.2.2.10 NMAC - Rp, 11.2.2.10 NMAC, 11/1/2018]

11.2.2.11 ESTABLISHMENT OF UTILIZATION GOALS FOR RACE, SEX, AND ETHNICITY:

A. Where, pursuant to 11.2.2.10 NMAC, a sponsor is required to establish a utilization goal for a particular racial, sex, or ethnic group in a major occupation group in its apprenticeship program, the sponsor, working with the registration agency, must establish a percentage goal at least equal to the availability figure derived under Subsection C of 11.2.2.10 NMAC for that major occupation group.

B. A sponsor's determination under 11.2.2.10 NMAC that a utilization goal is required constitutes neither a finding nor an admission of discrimination.

C. Utilization goals serve as objectives or targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work. Utilization goals are used to measure the effectiveness of the sponsor's outreach, recruitment, and retention efforts.

D. In establishing utilization goals, the following principles apply:

(1) Utilization goals may not be rigid and inflexible quotas, which must be met, nor are they to be considered either a ceiling or a floor for the selection of particular groups as apprentices. Quotas are expressly forbidden.

(2) Utilization goals may not provide a sponsor with a justification to extend a preference to any individual, select an individual, or adversely affect an individual's status as an apprentice, on the basis of that person's race, sex, or ethnicity.

(3) Utilization goals do not create set-asides for specific groups, nor are they intended to achieve proportional representation or equal results.

(4) Utilization goals may not be used to supersede eligibility requirements for apprenticeship. Affirmative action programs prescribed by the regulations of this part do not require sponsors to select a person who lacks qualifications to participate in the apprenticeship program successfully, or select a less-qualified person in preference to a more qualified one. [11.2.2.11 NMAC - Rp, 11.2.2.11 NMAC, 11/1/2018]

11.2.2.12 UTILIZATION GOALS FOR INDIVIDUALS WITH DISABILITIES:

A. Utilization goal: The administrator of OA has established a utilization goal of seven percent for employment of qualified individuals with disabilities as apprentices for each major occupation group within which the sponsor has an apprenticeship program.

B. Purpose: The purpose of the utilization goal is to establish a benchmark against which the sponsor must measure the representation of individuals with disabilities in the sponsor’s apprentice workforce by major occupation group. The goal serves as an equal opportunity objective that should be attainable by complying with all of the affirmative action requirements of this part.

C. Periodic review of goal: The administrator of OA will periodically review and update, as appropriate, the utilization goal.

D. Utilization analysis:

(1) Purpose. The utilization analysis is designed to evaluate the representation of individuals with disabilities in the sponsor’s apprentice workforce grouped by major occupation group. If individuals with disabilities are represented in the sponsor’s apprentice workforce in any given major occupation group at a rate less

than the utilization goal, the sponsor must take specific measures outlined in Subsections E and F of this section.

(2) Apprentice workforce analysis

(a) Process. Sponsors are required to analyze the representation of individuals with disabilities within their apprentice workforce by occupation. This is a two-step process. First, as required in 11.2.2.10 NMAC, each sponsor must group all apprentices in its registered apprenticeship program according to the occupational titles represented in its registered apprenticeship program. Next, for each occupation represented, the sponsor must identify the number of apprentices with disabilities.

(b) Schedule of evaluation. The sponsor must conduct its apprentice workforce analysis at each compliance review, and again if and when three years have passed without a compliance review. This updated workforce analysis, grouped according to major occupation group, should then be compared to the utilization goal established under Subsection A of this section.

(c) Compliance date.

(i) Sponsors currently registered with the department: A sponsor must conduct its first workforce analysis, pursuant to this section, no later than 180 days after the effective date of this plan or within two years of the date of registration, whichever is later.

(ii) New sponsors: A sponsor registering with the department after the effective date of this plan must conduct its initial workforce analysis pursuant to this section no later than two years after the date of registration.

E. Identification of problem areas. When the sponsor, working with the department, determines that the percentage of individuals with disabilities in one or more major occupation groups within which a sponsor has apprentices is less than the utilization goal established in subsection A

of this section, the sponsor must take steps to determine whether or where impediments to equal opportunity exist. When making this determination, the sponsor must look at the results of its assessment of personnel processes required by 11.2.2.14 NMAC and the effectiveness of its outreach and recruitment efforts required by 11.2.2.13 NMAC, if applicable.

F. Action-oriented programs. The sponsor must undertake action-oriented programs, including targeted outreach, recruitment, and retention activities identified in 11.2.2.13 NMAC, designed to correct any problem areas that the sponsor identified pursuant to its review of personnel processes and outreach and recruitment efforts.

G. Utilization goal relation to discrimination. A determination that the sponsor has not attained the utilization goal established in subsection A of this section in one or more major occupation groups does not constitute either a finding or admission of discrimination in violation of this part.

H. Utilization goal not a quota or ceiling. The utilization goal established in subsection A of this section must not be used as a quota or ceiling that limits or restricts the employment of individuals with disabilities as apprentices. [11.2.2.12 NMAC - Rp, 11.2.2.12 NMAC, 11/1/2018]

11.2.2.13 TARGETED OUTREACH, RECRUITMENT, AND RETENTION:

A. Minimum activities required: Where a sponsor has found underutilization and established a utilization goal for a specific group or groups pursuant to 11.2.2.11 NMAC or where a sponsor has determined pursuant to Subsection F of 11.2.2.12 NMAC that there are problem areas resulting in impediments to equal employment opportunity, the sponsor must undertake targeted outreach, recruitment, and retention activities that are likely to generate an increase in applications for apprenticeship

and improve retention of apprentices from the targeted group or groups or from individuals with disabilities, as appropriate. In furtherance of this requirement, the sponsor must:

(1) Set forth in its written affirmative action plan the specific targeted outreach, recruitment, and retention activities it plans to take for the upcoming program year. Such activities must include at a minimum:

(a) Dissemination of information to organizations serving the underutilized group regarding the nature of apprenticeship, requirements for selection for apprenticeship, availability of apprenticeship opportunities, and the equal opportunity pledge of the sponsor. These organizations may include: Community-based organizations, local high schools, local community colleges, local vocational, career and technical schools, and local workforce system partners including One Stop Career Centers;

(b) Advertising openings for apprenticeship opportunities by publishing advertisements in appropriate media which have wide circulation in the relevant recruitment areas;

(c) Cooperation with local school boards and vocational education systems to develop or establish relationships with pre-apprenticeship programs targeting students from the underutilized group to prepare them to meet the standards and criteria required to qualify for entry into apprenticeship programs; and

(d) Establishment of linkage agreements or partnerships enlisting the assistance and support of pre-apprenticeship programs, community-based organizations, advocacy organizations, or other appropriate organizations, in recruiting qualified individuals for apprenticeship;

(2) Evaluate and document after every selection cycle for registering apprentices the overall effectiveness of such

activities;

(3) Refine its targeted outreach, recruitment, and retention activities as needed; and

(4) Maintain records of its targeted outreach, recruitment, and retention activities and records related to its evaluation of these activities.

B. Other activities.
In addition to the activities set forth in Subsection A of this section, as a matter of best practice, sponsors are encouraged but not required to consider other outreach, recruitment, and retention activities that may assist sponsors in addressing any barriers to equal opportunity in apprenticeship. Such activities include but are not limited to:

(1) Enlisting the use of journeyworkers from the underutilized group or groups to assist in the implementation of the sponsor's affirmative action program;

(2) Enlisting the use of journeyworkers from the underutilized group or groups to mentor apprentices and to assist with the sponsor's targeted outreach and recruitment activities; and

(3) Conducting exit interviews of each apprentice who leaves the sponsor's apprenticeship program prior to receiving a certificate of completion to understand better why the apprentice is leaving the program and to help shape the sponsor's retention activities.

[11.2.2.13 NMAC - Rp, 11.2.2.13 NMAC, 11/1/2018]

11.2.2.14 REVIEW OF PERSONNEL PROCESSES:

A. As part of its affirmative action program, the sponsor must, for each registered apprenticeship program, engage in an annual review of its personnel processes related to the administration of the apprenticeship program to ensure that the sponsor is operating an apprenticeship program free from discrimination based on race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability.

This annual review is required regardless of whether the sponsor is underutilized as described in Subsection D of 11.2.2.10 NMAC. The review must be a careful, thorough, and systematic one and include review of all aspects of the apprenticeship program at the program, industry and occupation level, including, but not limited to, the qualifications for apprenticeship, application and selection procedures, wages, outreach and recruitment activities, advancement opportunities, promotions, work assignments, job performance, rotations among all work processes of the occupation, disciplinary actions, handling of requests for reasonable accommodations, and the program's accessibility to individuals with disabilities (including to the use of information and communication technology). The sponsor must make any necessary modifications to its program to ensure that its obligations under this part are met.

(1) **Compliance date for current sponsors:** A sponsor that has a registered apprenticeship program as of the effective date of this regulation must comply with the obligations of subsection A of this section by 180 days after the effective date of this part or within two years of the date of registration, whichever is later.

(2) **Compliance date for new sponsors:** A sponsor registering with a registration agency after the effective date of this regulation shall comply with the obligations of Subsection A of this section within two years after the date of registration.

B. The sponsor must include a description of its review in its written affirmative action plan and identify in the written plan any modifications made or to be made to the program as a result of its review. [11.2.2.14 NMAC - Rp, 11.2.2.14 NMAC, 11/1/2018]

11.2.2.15 SELECTION OF APPRENTICES:

A. A sponsor's procedures for selection of

apprentices must be included in the written plan for Standards of Apprenticeship submitted to and approved by the department, as required under 11.2.3.23 NMAC.

B. Sponsors may utilize any method or combination of methods for selection of apprentices, provided that the selection method(s) used meets the following requirements:

(1) The use of the selection procedure(s) must comply with the uniform guidelines on employee selection procedures (UGESP) (41 CFR part 60-3), including the requirements to evaluate the impact of the selection procedure on race, sex, and ethnic groups (Hispanic or Latino/non-Hispanic or Latino) and to demonstrate job-relatedness and business necessity for those procedures that result in adverse impact in accordance with the requirements of UGESP.

(2) The selection procedure(s) must be uniformly and consistently applied to all applicants and apprentices within each selection procedure utilized.

(3) The selection procedure(s) must comply with Title I of the ADA and EEOC's implementing regulations at Part 1630. This procedure(s) must not screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test or other selection criteria, as used by the program sponsor, is shown to be job-related for the position in question and is consistent with business necessity.

(4) The selection procedure(s) must be facially neutral in terms of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability. [11.2.2.15 NMAC - Rp, 11.2.2.15 NMAC, 11/1/2018]

11.2.2.16 INVITATION TO SELF-IDENTIFY AS AN INDIVIDUAL WITH A DISABILITY:

A. Pre-offer:

(1) A sponsor adopting an affirmative action program pursuant to 11.2.2.9 NMAC must invite applicants for apprenticeship to inform the sponsor whether the applicant believes that he or she is an individual with a disability as defined in Subsection G of 11.2.2.7 NMAC. This invitation must be provided to each applicant when the applicant applies or is considered for apprenticeship.

The invitation may be included with the application materials for apprenticeship, but must be separate from the application.

(2) The sponsor must invite an applicant to self-identify using the language and manner prescribed by OA and published on the OA website.

B. Post offer:

(1) At any time after acceptance into the apprenticeship program, but before the applicant begins his or her apprenticeship, the sponsor must invite the applicant to inform the sponsor whether the applicant believes that he or she is an individual with a disability as defined in Subsection G of 11.2.2.7 NMAC.

(2) The sponsor must invite an applicant to self-identify using the language and manner prescribed by OA and published on the OA website.

C. Apprentices:

(1) Within the timeframe specified in subsection H in this section, the sponsor must make a one-time invitation to each current apprentice to inform the sponsor whether he or she is an individual with a disability as defined in Subsection G of 11.2.2.7 NMAC.

The sponsor must make this invitation using the language and manner prescribed by OA and published on the OA website.

(2) Thereafter, the sponsor must remind apprentices yearly that they may voluntarily update their disability status.

D. Voluntary self-identification for apprentices: The sponsor may not compel or coerce an individual to self-identify as an individual with a disability.

E. Confidentiality:

The sponsor must keep all information on self-identification confidential, and must maintain it in a data analysis file (rather than the medical files of individual apprentices) as required under Subsection E of 11.2.2.17 NMAC. The sponsor must provide self-identification information to the department upon request. Self-identification information may be used only in accordance with this part.

F. Affirmative

action obligations: Nothing in this section may relieve the sponsor of its obligation to take affirmative action with respect to those applicants and apprentices of whose disability the sponsor has knowledge.

G. Nondiscrimination

obligations: Nothing in this section may relieve the sponsor from liability for discrimination in violation of this part.

H. Compliance dates:

(1) Sponsors currently registered with the department: A sponsor must begin inviting applicants and apprentices to identify as individuals with disabilities, pursuant to this section, no later than 180 days after the effective date of this plan or within two years of the date of registration, whichever is later. A sponsor must also invite each of its current apprentices to voluntarily inform the sponsor whether the apprentice believes that he or she is an individual with a disability, as defined in Subsection G of 11.2.2.7 NMAC, no later than 180 days after the effective date of this plan or within two years of the date of registration, whichever is later.

(2) New

Sponsors: A sponsor registering with the department after the effective date of this plan must begin inviting applicants and apprentices to identify as individuals with disabilities, pursuant to this section, no later than two years after the date of registration. A sponsor covered by this subparagraph must also invite each of its current apprentices to voluntarily inform the sponsor whether the apprentice believes that he or she is an individual with a disability, as defined in Subsection G of 11.2.2.7 NMAC,

no later than two years after the date of registration.
[11.2.2.16 NMAC - Rp, 11.2.2.16 NMAC, 11/1/2018]

11.2.2.17

RECORDKEEPING:

A. General

obligation: Each sponsor must collect such data and maintain such records as the department finds necessary to determine whether the sponsor has complied or is complying with the requirements of this part. Such records must include, but are not limited to records relating to:

(1) selection for apprenticeship, including applications, tests and test results, interview notes, basis for selection or rejection, and any other records required to be maintained under UGESP;

(2) the invitation to self-identify as an individual with a disability;

(3) information relative to the operation of the apprenticeship program, including but not limited to job assignments in all components of the occupation as required under Subparagraph (d) of Paragraph (2) of Subsection B of 11.2.3.23 NMAC, promotion, demotion, transfer, layoff, termination, rates of pay, other forms of compensation, conditions of work, hours of work, hours of training provided, and any other personnel records relevant to EEO complaints filed with the department under 11.2.2.19 NMAC or with other enforcement agencies;

(4) compliance with the requirements of 11.2.2.8 NMAC;

(5) requests for reasonable accommodation; and

(6) any other records pertinent to a determination of compliance with these regulations, as may be required by the department.

B. Sponsor

identification of record: For any record the sponsor maintains pursuant to this part, the sponsor must be able to identify the race, sex, ethnicity (Hispanic or Latino/non-Hispanic or

Latino), and when known, disability status of each apprentice, and where possible, the race, sex, ethnicity, and disability status of each applicant to apprenticeship and supply this information upon request to the department.

C. Affirmative

action programs: Each sponsor required under 11.2.2.9 NMAC to develop and maintain an affirmative action program must retain both the written affirmative action plan and documentation of its component elements set forth in 11.2.2.10 NMAC, 11.2.2.11 NMAC, 11.2.2.12 NMAC, 11.2.2.13 NMAC, 11.2.2.14 NMAC, and 11.2.2.16 NMAC.

D. Maintenance of

records: The records required by this part and any other information relevant to compliance with these regulations must be maintained for five years from the date of the making of the record or the personnel action involved, whichever occurs later, and must be made available upon request to the department or other authorized representative in such form as the department may determine is necessary to enable it to ascertain whether the sponsor has complied or is complying with this part. Failure to preserve complete and accurate records as required by Subsections A, B, and C of this section constitutes noncompliance with this part.

E. Confidentiality and use of medical information:

(1) Any information obtained pursuant to this part regarding the medical condition or history of an applicant or apprentice must be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(a) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or apprentice and necessary accommodations;

(b) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(c)

Government officials engaged in enforcing this part, the laws administered by the office of federal contract compliance programs (OFCCP), or the ADA, must be provided relevant information on request.

(2)

Information obtained under this part regarding the medical condition or history of any applicant or apprentice may not be used for any purpose inconsistent with this part.

F. Access to records:

Each sponsor must permit access during normal business hours to its places of business for the purpose of conducting on-site EEO compliance reviews and complaint investigations and inspecting and copying such books, accounts, and records, including electronic records, and any other material the department deems relevant to the matter under investigation and pertinent to compliance with this part. The sponsor must also provide the department access to these materials, including electronic records, off-site for purposes of conducting EEO compliance reviews and complaint investigations. Upon request, the sponsor must provide the department information about all format(s), including specific electronic formats, in which its records and other information are available. Information obtained in this manner will be used only in connection with the administration of this part or other applicable EEO laws.

[11.2.2.17 NMAC - Rp, 11.2.2.17 NMAC, 11/1/2018]

11.2.2.18 EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE REVIEWS:

A. Conduct

compliance reviews: The department will regularly conduct EEO compliance reviews to determine if the sponsor maintains compliance with this part, and will also conduct EEO compliance reviews when circumstances so warrant. An EEO compliance review may consist of, but is not limited to, comprehensive

analysis and evaluations of each aspect of the apprenticeship program through off-site reviews, such as desk audits of records submitted to the department, and on-site reviews conducted at the sponsor's establishment that may involve examination of records required under this part; inspection and copying of documents related to recordkeeping requirements of this part; and interviews with employees, apprentices, journeyworkers, supervisors, managers, and hiring officials.

B. Notification of compliance review findings: Within 45 business days of completing an EEO compliance review, the department must present a written notice of compliance review findings to the sponsor's contact person through registered or certified mail, with return receipt requested. If the compliance review indicates a failure to comply with this part, the department will so inform the sponsor in the notice and will set forth in the notice the following:

- (1) the deficiency(ies) identified;
- (2) how to remedy the deficiency(ies);
- (3) the timeframe within which the deficiency(ies) must be corrected; and
- (4) enforcement actions may be undertaken if compliance is not achieved within the required timeframe.

C. Compliance:
 (1) When a sponsor receives a notice of Compliance Review Findings that indicates a failure to comply with this part, the sponsor must, within 30 business days of notification, either implement a compliance action plan and notify the department of that plan or submit a written rebuttal to the findings. Sponsors may also seek to extend this deadline one time by up to 30 days for good cause shown. If the department upholds the notice after receiving a written response, the sponsor must implement

a compliance action plan within 30 days of receiving the notice from the department upholding its findings. The compliance action plan must include, but is not limited to, the following provisions:

- (a) a specific commitment, in writing, to correct or remediate identified deficiency(ies) and area(s) of noncompliance;
 - (b) the precise actions to be taken for each deficiency identified;
 - (c) the time period within which the cited deficiency(ies) will be remedied and any corrective program changes implemented; and
 - (d) the name of the individual(s) responsible for correcting each deficiency identified.
- (2) Upon the department's approval of the compliance action plan, the sponsor may be considered in compliance with this part provided that the compliance action plan is implemented.

D. Enforcement actions: Any sponsor that fails to implement its compliance action plan within the specified timeframes may be subject to an enforcement action under 11.2.2.20 NMAC. [11.2.2.18 NMAC - Rp, 11.2.2.18 NMAC, 11/1/2018]

11.2.2.19 COMPLAINTS:
A. Requirements for individuals filing complaints.

- (1) **Who may file:** Any individual who believes that he or she has been or is being discriminated against on the basis of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability with regard to apprenticeship, or who believes he or she has been retaliated against as described in 11.2.2.22 NMAC, may, personally or through an authorized representative, file a written complaint with the department.
- (2) **Time period for filing a complaint:** Generally, a complaint must be

filed within 300 days of the alleged discrimination or specified failure to follow the equal opportunity standards. However, for good cause shown, the department may extend the filing time. The time period for filing is for the administrative convenience of the department and does not create a defense for the respondent.

- (3) **Contents of the complaint:** Each complaint must be made in writing and must contain the following information:
 - (a) the complainant's name, address and telephone number, or other means for contacting the complainant;
 - (b) the identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);
 - (c) a short description of the events that the complainant believes were discriminatory, including but not limited to when the events took place, what occurred, and why complainant believes the actions were discriminatory (for example, because of his or her race, color, religion, sex, sexual orientation, national origin, age (40 or older), genetic information, or disability);
 - (d) the complainant's signature or the signature of the complainant's authorized representative.

B. Requirements of sponsors: Sponsors must provide written notice to all applicants for apprenticeship and all apprentices of their right to file a discrimination complaint and the procedures for doing so.

- (1) The notice must include the address, phone number, and other contact information for the department that will receive and investigate complaints filed under this part.
- (2) The notice must be provided in the application for apprenticeship and must also be displayed in a prominent, publicly available location where all apprentices will see the notice.

C. The notice must contain the following specific wording:

(1) “Your Right to Equal Opportunity: It is against the law for a sponsor of an apprenticeship program registered for federal purposes to discriminate against an apprenticeship applicant or apprentice based on race, color, religion, national origin, sex, sexual orientation, age (40 years or older), genetic information, or disability.”

(2) “The sponsor must ensure equal opportunity with regard to all terms, conditions, and privileges associated with apprenticeship.”

(3) “If you think that you have been subjected to discrimination, you may file a complaint within 300 days from the date of the alleged discrimination or failure to follow the equal opportunity standards with New Mexico Department of Workforce Solutions, Apprenticeship Office, 401 Broadway N.E., Albuquerque, New Mexico 87102, apprenticeship.info@state.nm.us, (505) 841-8565. You may also file complaints directly with the department’s Human Rights Bureau, 1596 Pacheco St., Suite 103, Santa Fe, NM 87505, 800-566-9471 or the EEOC, 1-800-669-4000 or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments).”

(4) “Each complaint filed must be made in writing and include the following information:”

(a) “Complainant’s name, address, and telephone number, or other means for contacting complainant;”

(b) “The identity of the respondent (i.e. the name, address, and telephone number of the individual or entity that the complainant alleges is responsible for the discrimination;”

(c) “A short description of the events that the complainant believed were discriminatory, including but not limited to when the events took

place, what occurred, and why the complainant believes the actions were discriminatory (for example, because of his or her race, color, religion, sex, sexual orientation, national origin, age (40 or over), genetic information, or disability);”

(d) ”The complainant’s signature or the signature of the complainant’s authorized representative.”

D. Requirements of the department:

(1) **Conduct investigations:** The investigation of a complaint filed under this part will be undertaken by the department, and will proceed as expeditiously as possible. In conducting complaint investigations, the department must:

(a) provide written notice to the complainant acknowledging receipt of the complaint;

(b) contact the complainant, if the complaint form is incomplete, to obtain full information necessary to initiate an investigation;

(c) initiate an investigation upon receiving a complete complaint;

(d) complete a thorough investigation of the allegations of the complaint and develop a complete case record that must contain, but is not limited to, the name, address, and telephone number of each person interviewed, the interview statements, copies, transcripts, or summaries (where appropriate) of pertinent documents, and a narrative report of the investigation with references to exhibits and other evidence which relate to the alleged violations; and

(e) provide written notification of the department’s findings to both the respondent and the complainant.

(2) **Seek compliance:** Where a report of findings from a complaint investigation indicates a violation of the nondiscrimination requirements of this part, the department should attempt to resolve the matter quickly at the department level whenever

appropriate. Where a complaint of discrimination cannot be resolved at the department level to the satisfaction of the complainant, the department must refer the complaint to other federal, state or local EEO agencies, as appropriate.

(3) **Referrals to other EEO agencies:**

The department, at its discretion, may choose to refer a complaint immediately upon its receipt or any time thereafter to:

(a) the department’s human rights bureau;

(b) the EEOC;

(c) the United States attorney general; or

(d) the department’s OFCCP.

(4) **Alternative complaint procedures:**

The department may adopt a complaint review procedure differing in detail from that given in this section provided it is submitted for review to and receives approval by the Administrator.

[11.2.2.19 NMAC - Rp, 11.2.2.19 NMAC, 11/1/2018]

11.2.2.20 ENFORCEMENT

ACTIONS: Where the department, as a result of a compliance review, complaint investigation, or other reason, determines that the sponsor is not operating its apprenticeship program in accordance with this part, the department must notify the sponsor in writing of the specific violation(s) identified and may:

A. offer the sponsor technical assistance to promote compliance with this part.

B. suspend the sponsor’s right to register new apprentices if the sponsor fails to implement a compliance action plan to correct the specific violation(s) identified within 30 business days from the date the sponsor is so notified of the violation(s), or, if the sponsor submits a written response to the findings of noncompliance, fails to implement a compliance action plan within 30 days of receiving the department’s notice upholding

its initial noncompliance findings. If the sponsor has not implemented a compliance action plan within 30 business days of notification of suspension, the department may institute proceedings to deregister the program in accordance with the deregistration proceedings set forth in 11.2.3.28 NMAC or if the department does not institute such proceedings within 45 days of the start of the suspension, the suspension is lifted.

C. Take any other action authorized by law. These other actions may include, but are not limited to:

- (1) referral to the EEOC;
 - (2) referral to the department's human rights bureau; or
 - (3) referral to the OFCCP.
- [11.2.2.20 NMAC - Rp, 11.2.2.20 NMAC, 11/1/2018]

11.2.2.21 REINSTATEMENT OF PROGRAM REGISTRATION: An apprenticeship program that has been deregistered pursuant to this part may be reinstated by the registration agency upon presentation of adequate evidence that the apprenticeship program is operating in accordance with this part.
[11.2.2.21 NMAC - Rp, 11.2.2.21 NMAC, 11/1/2018]

11.2.2.22 INTIMIDATION AND RETALIATION PROHIBITED:

A. A participant in an apprenticeship program may not be intimidated, threatened, coerced, retaliated against, or discriminated against because the individual has:

- (1) filed a complaint alleging a violation of this part;
- (2) opposed a practice prohibited by the provisions of this part or any other federal or state equal opportunity law;
- (3) furnished information to, or assisted or participated in any manner, in any investigation, compliance review, proceeding, or hearing under this

part or any federal or state equal opportunity law; or
(4) otherwise exercised any rights and privileges under the provisions of this part.

B. Any sponsor that permits such intimidation or retaliation in its apprenticeship program, including by participating employers, and fails to take appropriate steps to prevent such activity will be subject to enforcement action under 11.2.2.20 NMAC.
[11.2.2.22 NMAC - Rp, 11.2.2.22 NMAC, 11/1/2018]

11.2.2.23 EXEMPTIONS: Requests for exemption from these regulations, or any part thereof, shall be made in writing to the department and must contain a statement of reasons supporting the request. Exemptions may be granted for good cause by the department. The department must receive approval to grant an exemption from the administrator prior to granting an exemption from these regulations.
[11.2.2.23 NMAC - Rp, 11.2.2.23 NMAC, 11/1/2018]

HISTORY OF 11.2.2 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SLC 71-1, New Mexico State Apprenticeship Council, Equal Employment Opportunity in Apprenticeship State Plan, filed 10/5/71.

History of Repealed Material:
11.2.2 NMAC Labor and Workers Compensation, Equal Employment Opportunity in Apprenticeship State Plan, filed 11/30/01 – Repealed effective November 1, 2018.

WORKFORCE SOLUTIONS DEPARTMENT

This is an amendment to 11.1.2 NMAC, Sections 20 and 21, effective 1/1/2019.

Capitalizations throughout rule were corrected to conform to correct legislative style.

CONTINUED ON NEXT PAGE

11.1.2.20 PREVAILING WAGE AND FRINGE BENEFIT RATES: Pursuant to 11.1.2.13 NMAC, the department of workforce solutions hereby publishes the attached proposed [2018] 2019 prevailing wage and fringe benefit rates that will apply to all wage rate decisions issued from January 1, [2018] 2019 to December 31, [2018] 2019.

A. Type A: street, highway, utility and light engineering

Trade classification	Base rate	Fringe rate	Apprenticeship
Bricklayer/blocklayer/stonemason	[23.52] 23.78	[8.84] 9.08	
Carpenter/lather	[24.00] 24.08	[9.97] 10.84	
Cement mason	17.42	[6.35] 6.61	
Ironworker	26.50	[15.30] 16.20	
Painter (brush/roller/spray)	[16.75] 17.00	[6.28] 6.78	
Plumber/pipefitter	[28.95] 29.45	[12.23] 12.37	
Electricians outside classifications			
Groundman	[22.36] 22.81	[11.56] 11.93	
Equipment operator	[32.08] 32.73	[14.09] 14.51	
Lineman/wireman or tech	[37.75] 38.51	[15.57] 16.02	
Cable splicer	[41.53] 42.36	[16.56] 17.01	
Laborers			
Group I	[11.96] 11.81	[5.55] 5.88	
Group II	[12.26] 12.11	[5.55] 5.88	
Group III	[12.66] 12.51	[5.55] 5.88	
Group IV	12.76	5.88	
Operators			
Group I	[16.94] 18.60	[6.33] 5.94	
Group II	[17.69] 19.52	[6.33] 5.94	
Group III	[17.80] 19.62	[6.33] 5.94	
Group IV	[17.88] 19.73	[6.33] 5.94	
Group V	[18.00] 19.83	[6.33] 5.94	
Group VI	[18.14] 20.01	[6.33] 5.94	
Group VII	[18.52] 20.17	[6.33] 5.94	
Group VIII	[18.75] 20.46	[6.33] 5.94	
Group IX	[25.70] 27.88	[6.33] 5.94	
Group X	[28.60] 31.10	[6.33] 5.94	
Truck drivers			
Group I	[16.00] 16.15	[7.17] 7.52	
Group II	[16.00] 16.15	[7.17] 7.52	
Group III	[16.00] 16.15	[7.17] 7.52	
Group IV	[16.00] 16.15	[7.17] 7.52	
Group V	16.15	7.52	
Group VI	16.15	7.52	
Group VII	16.15	7.52	
Group VIII	16.21	7.52	
Group IX	18.15	7.52	
B. Type B: general building			
Trade classification	Base rate	Fringe rate	Apprenticeship
Asbestos worker – heat & frost insulator	[31.76] 32.01	11.11	.60
Boilermaker	[32.06] 34.97	27.35	.60
Bricklayer/blocklayer/stonemason	[23.52] 23.78	[8.84] 8.34	.60
Carpenter/lather	[24.00] 24.08	[9.47] 10.34	.60
Cement mason	[20.37] 20.71	9.78	.60
Electricians			
Electricians - outside classifications			

Groundman	[22.36] 22.81	[11.34] 11.93	.60
Equipment operator	[32.08] 32.73	[13.77] 14.51	.60
Lineman/tech	[37.75] 38.51	[15.19] 16.02	.60
Cable splicer	[41.53] 42.36	[16.14] 17.01	.60
Electricians - inside classifications			
Wireman/technician	[30.40] 31.55	[10.36] 10.75	.60
Cable splicer	[33.44] 34.71	[10.45] 10.84	.60
[Sound classifications]			
Low-voltage installer/technician	[23.39] 28.95	[8.31] 7.52	.60
[Technician	28.95	7.52]	
[Soundman	27.01	8.31]	
Elevator constructor	[33.01] 42.41	[32.40] 33.51	.60
Elevator constructor helper	[23.11] 33.93	[32.40] 33.51	.60
Glazier	20.25	[4.55] 5.05	.60
Ironworker	26.50	[14.66] 15.56	.60
Painter (brush/roller/spray)	[16.75] 17.00	[5.88] 6.38	.60
Paper hanger	[16.75] 17.00	[5.88] 6.38	.60
Drywall finisher/taper	[24.00] 24.08	[9.47] 10.34	.60
Plasterer	[22.07] 22.42	8.16	.60
Plumber/pipefitter	[28.95] 29.45	[12.23] 11.52	.60
Roofer	[23.78] 24.49	[7.85] 7.80	.60
Sheetmetal worker	[29.28] 30.28	[17.16] 16.60	.60
Soft floor layer	[24.00] 20.71	[9.47] 9.78	.60
Sprinkler fitter	[29.90] 30.90	[19.67] 20.47	.60
Tile setter	23.52	[8.84] 8.10	.60
Tile setter helper/finisher	[15.59] 15.85	[8.84] 8.34	.60
Laborers			
Group I	16.09	[5.68] 5.93	.60
Group II	[17.00] 17.25	[5.68] 5.93	.60
Group III	[18.00] 18.25	[5.68] 5.93	.60
Group IV	20.25	[5.68] 5.93	.60
Operators			
Group I	[20.32] 20.63	[6.47] 6.87	.60
Group II	[22.38] 22.74	[6.47] 6.87	.60
Group III	[22.82] 23.19	[6.47] 6.87	.60
Group IV	[23.24] 23.62	[6.47] 6.87	.60
Group V	[23.41] 23.80	[6.47] 6.87	.60
Group VI	[23.62] 24.01	[6.47] 6.87	.60
Group VII	[23.73] 24.12	[6.47] 6.87	.60
Group VIII	[26.61] 27.08	[6.47] 6.87	.60
Group IX	[28.89] 29.41	[6.47] 6.87	.60
Group X	[32.13] 32.73	[6.47] 6.87	.60
Truck drivers			
Group I	14.76	6.25	.60
Group II	15.00	6.25	.60
Group III	15.50	6.25	.60
Group IV	15.51	6.25	.60
Group V	15.60	6.25	.60
Group VI	15.75	6.25	.60
Group VII	15.90	6.25	.60
Group VIII	16.11	6.25	.60
Group IX	16.32	6.25	.60

C. Type C: residential			
Trade classification	Base rate	Fringe rate	
Asbestos worker - heat & frost insulator	[31.76] <u>32.01</u>	11.11	<u>.60</u>
Boilermaker	21.77	3.98	<u>.60</u>
Bricklayer/blocklayer/stonemason	[23.52] <u>23.78</u>	[8.00] <u>8.34</u>	<u>.60</u>
Carpenter/lathe	[24.00] <u>24.08</u>	[9.47] <u>10.34</u>	<u>.60</u>
Millwright/Piledriver	[31.00] <u>39.72</u>	[23.08] <u>16.68</u>	<u>.60</u>
Cement mason	[17.61] <u>17.96</u>	[9.03] <u>9.23</u>	<u>.60</u>
[Electricians]			
Electricians - outside classifications			
Groundman	[22.36] <u>22.81</u>	[11.34] <u>11.93</u>	<u>.60</u>
Equipment operator	[32.08] <u>32.73</u>	[13.77] <u>14.51</u>	<u>.60</u>
Lineman/tech	[37.75] <u>38.51</u>	[15.19] <u>16.02</u>	<u>.60</u>
Cable splicer	[41.53] <u>42.36</u>	[16.14] <u>17.01</u>	<u>.60</u>
Electricians - inside classifications			
Wireman/technician	[30.40] <u>31.55</u>	[10.36] <u>10.75</u>	<u>.60</u>
Cable splicer	[33.44] <u>34.71</u>	[10.45] <u>10.84</u>	<u>.60</u>
[Sound classifications]			
<u>Low-voltage installer/technician</u>	[10.00] <u>28.95</u>	[1.01] <u>7.52</u>	<u>.60</u>
[Technician	28.95	7.52]	
[Soundman	13.62	1.01]	
Elevator constructor	[33.01] <u>42.41</u>	[32.40] <u>33.51</u>	<u>.60</u>
Elevator constructor helper	[23.11] <u>33.93</u>	[32.40] <u>33.51</u>	<u>.60</u>
Glazier	20.25	[4.55] <u>5.05</u>	<u>.60</u>
Ironworker	26.50	[14.66] <u>15.56</u>	<u>.60</u>
Painter (brush/roller/spray)	[11.90] <u>12.00</u>	[5.88] <u>6.38</u>	<u>.60</u>
Paper hanger	[12.90] <u>13.00</u>	[5.88] <u>6.38</u>	<u>.60</u>
Drywall finisher/taper	[24.00] <u>24.08</u>	[9.47] <u>10.34</u>	<u>.60</u>
Plasterer	18.65	7.03	<u>.60</u>
Plumber/pipefitter	[28.95] <u>29.45</u>	[12.23] <u>11.52</u>	<u>.60</u>
Roofer	[23.09] <u>24.49</u>	[7.40] <u>7.80</u>	<u>.60</u>
Sheetmetal worker	[29.28] <u>30.28</u>	[17.16] <u>16.60</u>	<u>.60</u>
Soft floor layer	[24.00] <u>24.08</u>	[9.47] <u>10.34</u>	<u>.60</u>
Sprinkler fitter	[29.90] <u>30.90</u>	[19.67] <u>20.47</u>	<u>.60</u>
Tile setter	[23.46] <u>23.78</u>	[7.66] <u>8.34</u>	<u>.60</u>
Tile setter help/finisher	[16.04] <u>15.85</u>	[7.66] <u>8.34</u>	<u>.60</u>
Laborers			
Group I	14.55	[5.68] <u>5.93</u>	<u>.60</u>
Group II	[15.50] <u>15.75</u>	[5.68] <u>5.93</u>	<u>.60</u>
Group III	[16.50] <u>16.75</u>	[5.68] <u>5.93</u>	<u>.60</u>
Group IV	[17.50] <u>17.75</u>	[5.68] <u>5.93</u>	<u>.60</u>
Operators			
Group I	[12.03] <u>12.18</u>	[5.90] <u>5.25</u>	<u>.60</u>
Group V	[13.25] <u>13.43</u>	[5.90] <u>5.25</u>	<u>.60</u>
Group VII	[16.22] <u>16.48</u>	[5.90] <u>5.25</u>	<u>.60</u>
Group VIII	[17.71] <u>18.00</u>	[5.90] <u>5.25</u>	<u>.60</u>
Truck drivers			
Group I	14.88	0.00	<u>.60</u>
Group II	15.00	0.00	<u>.60</u>
Group III	15.08	0.00	<u>.60</u>
Group IV	15.20	0.00	<u>.60</u>
Group V	15.25	0.00	<u>.60</u>
Group VI	15.35	0.00	<u>.60</u>
Group VII	15.45	0.00	<u>.60</u>

Group VIII	15.59	0.00	.60
Group IX	15.74	0.00	.60
D. Type H: heavy engineering			
Trade classification	Base rate	Fringe rate	Apprenticeship
Asbestos worker – heat & frost insulator	[31.76] 32.01	11.11	.60
Boilermaker	[32.06] 34.97	27.35	.60
Bricklayer/blocklayer/stonemason	[23.52] 23.78	[8.00] 8.34	.60
Carpenter/lather	[24.00] 24.08	[9.47] 10.34	.60
Millwright/piledriver	[31.00] 39.72	[23.08] 16.68	.60
Cement mason	21.00	9.38	.60
[Electricians]			
Electricians - outside classifications			
Groundman	[22.36] 22.81	[11.34] 11.93	.60
Equipment operator	[32.08] 32.73	[13.77] 14.51	.60
lineman/ technician	[37.75] 38.51	[15.19] 16.02	.60
Cable splicer	[41.53] 42.36	[16.14] 17.01	.60
Electricians - inside classifications			
Wireman/technician	[30.40] 31.55	[10.36] 10.75	.60
Cable splicer	[33.44] 34.71	[10.45] 10.84	.60
Glazier	20.25	[4.55] 5.05	.60
Ironworker	26.50	[14.66] 15.56	.60
Painter (brush/roller/spray)	21.25	[8.62] 8.82	.60
Plumber/pipefitter	[31.90] 32.40	[13.40] 12.45	.60
Roofer	[23.09] 24.49	[7.40] 7.80	.60
Sheetmetal worker	[29.28] 30.28	[17.16] 16.60	.60
Operators			
Group I	[19.38] 20.35	[5.74] 5.94	.60
Group II	[19.56] 20.54	[5.74] 5.94	.60
Group III	[19.74] 20.73	[5.74] 5.94	.60
Group IV	[19.88] 20.87	[5.74] 5.94	.60
Group V	[19.98] 20.98	[5.74] 5.94	.60
Group VI	[20.15] 21.16	[5.74] 5.94	.60
Group VII	[20.17] 21.18	[5.74] 5.94	.60
Group VIII	[21.96] 23.06	[5.74] 5.94	.60
Group IX	[27.30] 28.67	[5.74] 5.94	.60
Group X	[30.35] 31.87	[5.74] 5.94	.60
Laborers			
Group I	[16.76] 16.86	[5.30] 5.63	.60
Group II	[17.51] 17.61	[5.30] 5.63	.60
Group III	[19.02] 19.12	[5.30] 5.63	.60
Group IV	[19.42] 19.52	[5.30] 5.63	.60
[Group V	20.30	5.30	
Group VI	18.67	5.30	
Group VII	19.04	5.30	
Group VIII	19.39	5.30	
Group IX	19.63	5.30	
Group X	20.30	5.30]	
Truck drivers			
Group I	[16.00] 16.15	[7.17] 17.52	.60
Group II	[16.00] 16.15	[7.17] 17.52	.60
Group III	[16.00] 16.15	[7.17] 17.52	.60
Group IV	[16.00] 16.15	[7.17] 17.52	.60
Group V	[16.00] 16.15	[7.17] 17.52	.60
Group VI	[16.00] 16.15	[7.17] 17.52	.60

Group VII	[16.00] 16.15	[7.17] 17.52	.60
Group VIII	[16.06] 16.21	[7.17] 17.52	.60
Group IX	[16.41] 18.15	[7.17] 17.52	.60

[11.1.2.20 NMAC - N, 02-29-2016; Rp, 1/1/2017; A, 1/1/2018]

**11.1.2.21 2019
SUBSISTENCE, ZONE, AND
INCENTIVE PAY RATES**

All contractors are required to pay subsistence, zone, and incentive pay according to the particular trade.

A. Asbestos workers or heat and frost insulators

(1) For travel more than 80 miles from Albuquerque City Hall or El Paso City Hall, \$70 per day if overnight travel is required.

(2) For travel more than 80 miles from Albuquerque City Hall or El Paso City Hall, \$40 per day if overnight travel is not required.

B. Boilermakers
(1) From city hall of the dispatch city or the employee's home address, whichever is closer to the job location, \$55.00 per day for travel between 70 and 120 miles.

(2) For employers based outside of Albuquerque, employees traveling more than 50 miles from the employer's main office, \$30 per day.

C. Cement Masons
(1) For employees who travel to Santa Fe from Albuquerque or vice versa, \$20 per day.

(2) In all other work performed more than 50 miles from the employer's main office, \$50 per day.

(3) Mutually agreed-upon lodging or transportation paid for by the employer will substitute for subsistence pay.

D. Drywall Finishers and Tapers:

(1) \$40 per day (\$5 per hour for eight hours work) for over sixty miles over the most typically traveled route, or other mutually agreed upon suitable lodging or transportation.

(2) Special provision for Santa Fe and

Albuquerque: Employees who travel to Santa Fe from Albuquerque or Albuquerque to Santa Fe will be paid \$15 per day or other mutually agreed upon lodging or transportation.

E. Electricians (inside classifications)

(1) For Albuquerque only:

(a) Zone 1 is classified as being within 40 miles from the main post office.

(b) Zone 2 shall extend up to 10 miles beyond zone 1. Work performed within zone 2 shall be compensated none percent above the journeyman rate for zone 1.

(c) Zone 3 shall extend up to 20 miles beyond zone 1. Work performed within zone 3 shall be compensated fifteen percent above the journeyman rate for zone 1.

(d) Zone 4 shall extend 20 miles or more beyond zone 1. Work performed within zone 4 shall be compensated twenty six percent above the journeyman rate for zone 1.

(2) For Los Alamos County only: work performed within the county shall be compensated fifteen percent above the zone 1 journeyman rate. In addition to base and zone rates of pay, workers shall be compensated for personal or sick time (PTO)

(3) For all other counties:

(a) Zone 1 is:

(i) within six miles from the main post office for Raton, Tucumcari, and Farmington.

(ii) within eight miles from the main post office for Las Vegas.

(iii) within ten miles from the main post office for Santa Fe and Gallup.

(iv) within twelve miles from the main post office for Belen, Carrizozo, Clovis, Los Lunas, Portales, Roswell, Ruidoso, Artesia, Carlsbad, Hobbs, and Lovington.

(v) within fourteen miles from the main post office for Espanola.

(b) Zone 2 shall extend up to 20 miles beyond zone 1. Work performed within zone 2 shall be compensated none percent above the journeyman rate for zone 1.

(c) Zone 3 shall extend up to 30 miles from zone 1. Work performed within zone 3 shall be compensated fifteen percent above the journeyman rate for zone 1.

(d) Zone 4 shall extend beyond 30 miles from zone 1. Work performed within zone 4 shall be compensated twenty six percent above the journeyman rate for zone 1.

F. Electricians (outside classification): \$50 per diem to be paid for work 30 miles outside of Santa Fe and 60 miles outside of Albuquerque.

G. Glaziers
(1) When out-of-town travel is required, the employer shall pay the employee for suitable lodging with no more than two people per room and \$20.00 per night for food.

(2) Employees required to use a personal vehicle for travel to a jobsite beyond a 30 mile radius of the main post office in town where the employer's shop is located shall be compensated at the current Internal Revenue Service (IRS) rate for actual mileage incurred beyond the 30 mile radius, plus their regular rate of pay for travel time.

H. Ironworkers:
(1) Travel more than 50 miles from the interchange of Interstate 40 and

Interstate 25 or from the employee's home should be paid at \$6.00 per hour.

(2) If travel is within Santa Fe county, travel should be paid at \$3.00 per hour above scale.

I. Laborers:

(1) Type A

(a)

Work travel between 50 and 85 miles from the employer's primary address should be compensated at \$3.50 per hour.

(b)

Work travel 86 miles or greater from the employer's primary address should be compensated at \$5.00 per hour.

(2) Types B

and C - work travel over 50 miles from the employer's primary address should be compensated at \$5.00 per hour.

(3) Type H -

no zone subsistence pay

(4) If an

employer provides the employee transportation and mutually agreeable, suitable lodging in areas where overnight stays are necessary, subsistence rates do not apply.

J. Millwrights

(1) Work

travel between 76 and 150 miles should be compensated at \$50.00 per day.

(2) Work

travel 151 miles or greater should be compensated at \$75.00 per day.

K. Operating

Engineers

(1) Type A and

C operators should be compensated for zone and subsistence as follows:

(a)

Work travel between 50 and 85 miles from the interchange of Interstate 25 and Interstate 40 in Albuquerque, or from the Farmington City Hall in Farmington, should be compensated at \$2.50 per hour.

(b)

Work travel 86 miles or more from the interchange of Interstate 25 and Interstate 40 in Albuquerque or from the Farmington City Hall in Farmington, should be compensated at \$4.00 per hour.

(2) Type B and

H operators are not eligible for zone and subsistence pay.

L. Painters

(1) Work

travel between 30 and 75 miles from the main post office in town where an employee resides shall be compensated at \$1.00 per hour.

(2) Work

travel 76 miles or more from the main post office in the town when an employee resides shall be compensated at \$2.50 per hour.

(3) When

the employee is required to stay overnight, the employer should provide and pay for suitable lodging.

M. Paper hangers

(1) Work

travel between 30 and 75 miles from the main post office in town where an employee resides shall be compensated at \$1.00 per hour.

(2) Work

travel 76 miles or more from the main post office in the town where an employee resides shall be compensated at \$2.50 per hour.

(3) When

the employee is required to stay overnight, the employer should provide and pay for suitable lodging.

N. Plasterers

(1) Employees

who travel from Albuquerque to Santa Fe should be compensated at \$15.00 per day.

(2) Except for

employees who travel from Santa Fe to Albuquerque, work travel 60 miles or more from the employer's office over the most typically traveled route should be compensated at \$5.00 per hour and capped at \$40.00 per day.

O. Plumbers and

pipefitters

(1) Work

travel for Type H workers only 90 or more miles from an employee's primary residence, and involving an overnight stay, should be compensated at \$50.00 per day.

(2) No zone or

subsistence pay is required should the employer elect to cover the room cost.

P. Roofers - work

travel requiring an overnight stay

should be compensated at \$35 per day for food. Employer should provide and pay for a suitable hotel. When employees are assigned to jobs located 60 or more miles from the employer's place of business, transportation to and from the job site must be provided.

Q. Sheet metal workers

(1) Work

travel 90 miles or more from the main post office in the municipality of the employer's primary place of business, and where an overnight stay is required, should be paid at \$45.00 per day.

(2) No zone

or subsistence pay is required where an employer pays for lodging at a suitable location with no more than two employees per room.

R. Sprinkler fitters

(1) Work

travel between 60 and 80 miles from the employee's primary residence should be compensated at \$19.00 per day.

(2) Work

travel between 81 and 100 miles from the employee's primary residence should be compensated at \$29.00 per day.

(3) Work

travel of 101 miles or more from the employee's primary residence should be compensated at \$105.00 per day, plus \$.54 per mile when driving directly from home to the job site, and directly from job site to home or next job site, as assigned by the employer.

(4) No zone

or subsistence pay shall be paid when the employer provides daily transportation and the employee elects to travel back and forth from home.

**END OF
ADOPTED RULES**

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Submittal Deadlines and Publication Dates

Volume XXIV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 16
Issue 2	January 18	January 30
Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	March 1	March 13
Issue 6	March 15	March 27
Issue 7	March 29	April 10
Issue 8	April 12	April 24
Issue 9	April 26	May 15
Issue 10	May 17	May 29
Issue 11	May 31	June 12
Issue 12	June 14	June 26
Issue 13	June 28	July 10
Issue 14	July 12	July 24
Issue 15	July 26	August 14
Issue 16	August 16	August 28
Issue 17	August 30	September 11
Issue 18	September 13	September 25
Issue 19	September 27	October 16
Issue 20	October 18	October 30
Issue 21	November 1	November 13
Issue 22	November 15	November 27
Issue 23	November 29	December 11
Issue 24	December 13	December 27

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